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OVERSIGHT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

OVERSIGHT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

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OVERSIGHT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

TUESDAY, NOVEMBER 8, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Karen Phillips, professional staff member and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. This morning the Surface Transportation Subcommittee is conducting its third annual oversight hearing on the Household Goods Transportation Act of 1980. This legislation was enacted to reduce Government regulation of the household goods moving industry and to encourage competition in this industry.

Together with the entry and ratemaking reforms of the Motor Carrier Act of 1980, the Household Goods Transportation Act is having a significant impact on the household goods moving industry. To date, the Household Goods Transportation Act has brought benefits to consumers, as carriers are now offering a greater variety of price and service options.

Nevertheless, I understand that the industry has several specific concerns related to the Interstate Commerce Commission's implementation of the act and various Department of Defense activities. We look forward to hearing from our witnesses today as to the effect of the Household Goods Transportation Act thus far and to obtain their views as to whether Congress needs to take any action to address the various concerns of the household goods moving industry.

Our first witness is Mr. Reese Taylor, chairman of the Interstate Commerce Commission. I said to Chairman Taylor a few minutes ago that I am seeing him more frequently than I am seeing my wife in recent weeks. We are delighted to have you back. I hope this is the last time for the next few months.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY WARREN McFARLAND, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE; WILLIAM SOUTHARD, DIRECTOR, OFFICE OF TRANSPORTATION ANALYSIS; AND JAN ROSENAK, LEGISLATIVE COUNSEL

Mr. TAYLOR. We will breathe a sigh of relief.

Let me begin by introducing the people at the table with me this morning. On my left is Warren McFarland, Director of our Office of Compliance and Consumer Assistance. On my far right is OTA Director Southard, and on my immediate right is the Commission's legislative counsel, Jan Rosenak.

Thank you for the opportunity today to present the views of the Commission on the Household Goods Transportation Act. While any final assessment of the act's impact on carriers and shippers would be premature, we believe that so far the impact has been positive and that substantial progress has been made in terms of fulfilling congressional intent.

In enacting this legislation, Congress had a threefold purpose—one, reducing unnecessary regulation; two, strengthening consumer remedies and protections; and, three, establishing maximum carrier flexibility in the pricing of service and in meeting the needs of shippers.

Today I will report on the actions the Commission has taken to carry out these legislative objectives and on the act's impact upon shippers in the household goods industry. I will also comment on present trends and possible future developments.

In accordance with section 6 of the act, the Commission instituted a rulemaking and then promulgated final rules in March 1981. The rules were stayed by the Court of Appeals for the Seventh Circuit until December 9, 1981, when the court upheld the rules and lifted the stay. The rules became effective on February 1, 1982.

Recently we reopened this proceeding to review our regulations in the light of experience gained and also at the request of the American Movers Conference. Comments are now being sought on whether any of the present rules are burdensome, unnecessary, inadequate to protect shippers, or otherwise inappropriate.

In accordance with congressional intent, regulations and paperwork required of carriers have been reduced without jeopardizing consumer protection. We believe that our elimination of the requiring filing of various reports will relieve the industry of an annual burden of nearly 44,000 work hours.

Last March, the Commission instituted a monitoring program to ascertain the level of compliance with our operational regulations. This program will include the development of information that should enable the Commission to evaluate carriers' activities, to monitor the quality of their agents' service. The analysis of information received under the program is near completion.

With respect to strengthening consumer remedies and protections, the Commission adopted rules requiring: first, that improved, easy-to-read, premove information be distributed to shippers; second, that shippers be informed of the existence and use of claims dispute resolution programs; third, that carriers establish

customer complaint and inquiry handling programs; fourth, that shippers be permitted to observe any weighing of a shipment; fifth, that shippers be notified of impending service delays; and, sixth, that carriers deliver shipments upon payment of no more than 110 percent of the nonbinding estimated charges and give shippers at least 30 days to pay any balance due.

The third legislative objective calls for carrier flexibility in the pricing of service. A wide variety of new price and service options really have emerged. Various forms of discounts and diverse service plans have become widespread, and many carriers have entered into negotiated contracts.

Binding estimate programs are offered by a number of household goods carriers. These programs may be used to meet competition and to penetrate new markets, thereby providing discounts to individual COD shippers as well as corporate accounts.

Further, offering shippers guaranteed service dates and liquidated damages in the event of delayed service is also becoming a common practice. All of the major carriers are offering full value liability protection. This is an added option offered at an additional charge. Prior to offering this option, the liability of the carrier was generally limited to the maximum of the actual cash value of the article as of the date the carrier received it. Now, under full value liability protection, a shipper has the option of being compensated on the basis of replacement cost.

It is clear that the frequency of shipper complaints has declined considerably since passage of the act. Data indicate that the number of complaints received during 1983 represents a continued reduction from prior years. For complaints during this fiscal year, there has been a 43-percent reduction from the number of complaints received in the prior fiscal year.

Now, in all fairness, I should note that figures for fiscal year 1983 reflect only jurisdictional complaints, while figures for prior fiscal years include complaints whether or not they were within our jurisdiction. Nevertheless, the reduction is clearly substantial, in fact approximately 23 percent, if only jurisdictional complaints had been counted, for both fiscal year 1982 and fiscal year 1983.

All the major carriers and many small carriers have given notice of participation in dispute resolution programs utilizing arbitration. The Commission believes that implementation of acceptable settlement dispute programs will result in fewer shipper complaints and less necessity for Commission involvement.

For example, 45 carriers are participating members of the American Movers Conference dispute settlement program. From February 1, 1982, to September 1, 1983, 122 requests for arbitration were received from shippers; to date, 82 of these have been resolved through mediation or arbitration.

While it is still too soon to provide a definitive assessment of the act, we are able to make some observations on current trends. There has been some new entry into the industry and as the economy improves new entry may increase. Existing carriers have substantially expanded their operations in an effort to reduce cost through efficiency improvements. Along with greater competition, this should result in better service at less cost to the public.

We are also witnessing what appears to be the development of a significant trend toward the use of contracts by household goods moving companies. As a marketing tactic, contract carriage appears advantageous, particularly insofar as innovative pricing strategies are concerned.

In a recent decision the Commission granted an exemption from tariff filing requirements for motor contract carriers of property. As a result, more common carriers may apply for contract carriage authority.

Before concluding my remarks I would like to comment briefly on the financial condition of the industry. The most recent data released by the ICC's Bureau of Accounts show that earnings of the Nation's largest household goods carriers for the 12 months ending June 30, 1983, improved compared to the same period of the previous year.

This report, which is discussed in detail in my full statement, also compares the revenues, earnings, and traffic volume for the 15 largest household goods carriers for the quarters ending June 30, 1983, and June 30, 1982. During the second quarter of this year, the operating revenues of these carriers increased 1.7 percent and revenue tons hauled increased 2.6 percent.

The increase in operating revenues represents the first year-to-year quarterly increase in revenues for the 15 largest household goods carriers since the fourth quarter of 1981.

Regarding motor carriers of property in general, a comparison of the previously discussed earnings data for the 15 largest household goods carriers with the earnings data of the 100 largest motor carriers of property shows that the household goods carriers reported a lesser proportionate increase in earnings for the 12 months ending June 30, 1983, versus the same period of 1982. Also, the household goods carriers reported a larger proportionate decline in revenues and a lower proportionate decrease in tonnage hauled.

The Commission will continue to implement the act in accordance with congressional intent. At present, the act appears to be working well to the benefit of both shippers and carriers. We will keep you apprised of further developments and will recommend additional legislative changes as they appear warranted.

This concludes my prepared remarks, Mr. Chairman, and I would be happy to answer any questions that you may have.

Senator DANFORTH. Thank you, Mr. Chairman.

Representatives of this industry believe that discriminatory and predatory pricing practices have become common in the industry. Do you have a view on that?

Mr. TAYLOR. Yes. Let me address that, if I might, briefly.

Many substantial changes have taken place in the industry—there is no question about that—insofar as pricing techniques are concerned since passage of both the Motor Carrier Act and the Household Goods Act. We were asked repeatedly last year during the depths of the recession to do something about all of the discounting that was going on.

In order to address that problem, we had a proceeding. I felt particularly strongly that it was essential to have some input and get some comprehensive comments to ascertain what was really in fact

taking place. The proceeding was known as Ex Parte No. 166, and that is the reason it was held.

We did issue a decision last August. I would be glad to make that part of the record, if you would like to have it. It concludes that the new pricing practices have benefited the public and have led to increased carrier efficiency.

As a result of that, our conclusion was that we should continue to look at these allegations of predatory and discriminatory pricing on a case-by-case basis rather than coming up with a whole lot of new standards and rules which we felt really would have a chilling effect on competition.

I felt that the whole proceeding was extremely worthwhile and said so. Unfortunately, one of my colleagues added a comment that he thought it was all a great waste of time and a waste of the Commission's resources. I strongly disagree with that. I think that what we developed out of it was meaningful and important.

If we had had some hearings with respect to it, maybe we would have gotten even some more information, but I think the bottom line is that we feel no standard should be adopted, that it should be looked at on a case-by-case basis, and if somebody can come in and show us a specific case of predatory or discriminatory pricing we are more than happy to have a look at it.

Senator DANFORTH. And you said you were now in the process of reviewing regulations and seeking comments with respect to the regulatory burden and paperwork and so forth?

Mr. TAYLOR. We are doing that.

We felt we ought to have another look now that we have some experience under our belt, and frankly there were some allegations from the industry that we had not done enough to relieve the paperwork burdens. They feel that there are many things that are still too onerous and that we should do something more about it.

So they filed a petition and, as a matter of fact, we are having another look. That proceeding calls for comments by December 13, 1983; replies are due January 12. We hope to issue a final decision making any specific recommendations that we have that appear warranted within 75 days of the close of the reply period and, therefore, I think we can pretty well estimate that anything we do in this regard should be in effect by April 1, 1984.

Senator DANFORTH. Has the ICC developed any type of system for monitoring binding estimates and does the ICC have any ongoing enforcement activities in this area?

Mr. TAYLOR. Well, we looked at the issue of binding estimates in an ICC staff study, and that was published in September of 1982. It was done by a very competent individual who has spent a lot of time at the Commission, who is no longer there.

I think, if memory serves me correctly, it was former Senator Schmitt who was particularly concerned about this problem and whether or not binding estimates were being used in any kind of a preferential or discriminatory way. This study concluded that, as far as we could tell from the information we were able to develop, binding estimates were not being used in any kind of a preferential manner.

As discussed in my full statement, our Office of Transportation Analysis, which Bill Southard heads up, has designed a new study

to determine the impact of the household goods legislation and the Motor Carrier Act on both carriers and shippers of household goods. As a part of that study—which, by the way, should be completed as far as we can tell somewhere around June 1984—we will be taking a careful look at the matter of binding estimates. They have come into more vogue. It used to be there was just one carrier who used them extensively: now more carriers are using them more frequently.

Mr. McFarland's Office of Compliance and Consumer Assistance also monitors the binding estimate problem, and we think they are working out quite well now. More and more carriers are using binding estimates.

Senator DANFORTH. Do you have any comment that you would like to make on the controversy between the industry and the Department of Defense?

Mr. TAYLOR. I guess I could answer that in one word—no. They are going to testify after us. You know we got into the reweigh problem last year. If there is a second reweigh, we use that, whether it is higher or lower, and they still want to go with the lowest if there is a reweigh.

I know that you have commented long and loud last year, "Isn't that silly: why can't we have one rule?" There has been a court decision which in effect tells us we are correct. Assuming we cannot impose our rule on the Department of Defense, we have tried voluntarily through discussions as a result of the hearings before you on this matter last year to work out something voluntarily. So far, that simply has not been productive. They like their rule, and we like ours. We cannot impose ours on them, and they do not want to change.

So, you know, we still have two rules.

Senator DANFORTH. So it was a waste of time?

Mr. TAYLOR. Well, we tried. You felt very strongly that there ought to be just one rule, and so did I. So we explored it, but we really have not been able to work anything out at this juncture. I think that is maybe still a source of irritation to the industry, and I am sure the Department of Defense witness who is going to follow me may tell you why he feels that they ought to stick with their rule.

We strongly feel that if you are going to have a second reweigh, then that is the one that ought to determine it. But we still at this juncture do have two rules.

Senator DANFORTH. Thank you very much, Mr. Chairman.

Mr. TAYLOR. Delighted to be here, Mr Chairman, thank you. Maybe this will be it for a while.

[The statement follows:]

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to appear here today to present the views of the Interstate Commerce Commission on the Household Goods Transportation Act of 1980 (the Act). While any final assessment of the Act's impact on carriers and shippers would be premature, we believe that, so far, the impact has been positive, and that substantial progress has been made in terms of fulfilling the purpose of Congress in enacting this legislation.

The Act's purpose, as set forth in the Declaration of Policy, was threefold: (1) reducing unnecessary regulation; (2) strengthening consumer remedies and protections and (3) establishing maximum carrier flexibility in pricing of service and meeting the needs of shippers. Today, we are reporting on the actions the Commission has undertaken to carry out these legislative objectives, and on the impact of the Act on shippers and the household goods industry. We will also comment on present trends and possible further developments in this industry.

I.C.C. IMPLEMENTATION

In accordance with the specific mandate in Section 6 of the Act, the Commission promptly reviewed and revised all of its operational regulations for household goods transportation in Ex Parte No. MC-19 (Sub-No. 36), *Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations),* 132 M.C.C. 599 (1981). On October 16, 1980, a rulemaking was instituted. Comments were received, modifications made, and final rules were served on March 11, 1981, to become effective on June 9, 1981. These rules were based on comments filed, the Commission's own experience with the industry in the past, and the input gathered at various public conferences the Commission held to solicit information on how to improve the agency's regulation. The rules were appealed to the Seventh Circuit of the U.S. Court of Appeals. The June 9th effective date was stayed by the Court until December 9, 1981, when a decision was issued upholding the rules and lifting the stay. The rules were reinstated by the Commission and became effective February 1, 1982.

Section 6 of the Act also directs the Commission to minimize its regulations and the paperwork required of the carriers to the maximum extent feasible, consistent with the protection of individual shippers. Accordingly, the Commission has eliminated many unnecessary regulations and has substantially reduced paperwork. For example, most annual performance reports and all notices of agency agreements have been eliminated. Also eliminated was the requirement for filing quarterly reports detailing instances where actual charges for a shipment were either more than 10 percent above or below the initial estimate. To further reduce regulatory burdens, the Commission eliminated 14 financial schedules in Annual Report Form M-H required of Class I and II household goods carriers. We believe that the elimination of these various reports will relieve the industry of an annual burden of nearly 44,000 work-hours, without lessening individual shipper protections. Additional carrier work-hour savings have resulted from the Commission's elimination of requirements that (1) carriers obtain signed receipts from shippers stating that they have received certain pre-move information; and (2) more than one weight ticket be completed when both the tare and gross weighings are conducted on the same scale. It should be stressed that the requirements eliminated are those which we believe will reduce paperwork burdens without jeopardizing consumer protection.

The Commission continues its efforts to reduce regulation in implementing the Act. Recently, we reopened the Ex Parte No. MC-19 (Sub-No. 36) proceeding for a review of our household goods regulations in the light of the experience gained under our current rules. Comments from interested parties are now being sought on whether any of the present or otherwise inappropriate. Meanwhile, pursuant to the Act, the Commission is monitoring the operational activities of the household goods transportation industry. Last March, our Office of Compliance and Consumer Assistance (OCCA) instituted a monitoring program to ascertain the level of compliance by the industry with our operational regulations. The analysis of information received under the program is near completion.

Section 5 of the Act provides that each household goods carrier shall be responsible for all acts or omissions of its agents which relate to services performed for that carrier. Each carrier is to use diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services. The Commission issued a policy statement to remind household carriers that they are responsible for the actions of their agents.

Subsequently, one of the recommendations made by the General Accounting Office (GAO) in its June 10, 1983, report to Congress entitled *The Household Goods Moving Industry: Changes Since Passage of Regulatory Reform Legislation,* was that the Commission periodically evaluate the various carriers' systems or activities to monitor the quality of their agents' service, rather than completely relying on self-regulation by the van lines. In commenting on a draft of the GAO report, the Commission indicated that a specific audit did not appear warranted, considering the substantial decline in complaints, which is discussed later in this statement.

However, as the GAO report recognizes,[1] we stated that this facet of carrier operations would be included in our overall household goods monitoring program, and this action has now been taken. Approximately 25 percent of the program is devoted to eliciting information from 44 carriers of varying sizes concerning their monitoring of their agents. Areas involved in the study include the number and capacity of carrier personnel devoted primarily to administering and supervising the agency programs; the quality of carrier instruction in the area of pre-move information; and the extent to which documentary evidence in the carriers' possession demonstrates supervision over the acts and/or omissions of their agents. Depending on the conclusion drawn, we can then determine with what frequency successive periodic surveys should be conducted.

The Act provides that, in protecting consumers, the Commission may issue, where appropriate, reasonable performance standards for the transportation of household goods subject to the jurisdiction of the agency. The Commission has proposed such standards in Ex Parte No. MC-19 (Sub No. 36A), and comments have been filed. The Commission expects to soon reach a final decision in this proceeding.

Section 7 of the Act allows household goods carriers to establish programs to settle disputes with shippers. Such programs must be approved by the Commission and meet certain statutory requirements. Under the programs, claims would be presented before an impartial arbitrator. Most of the major carriers and many small carriers have given notice of their willingness to participate in dispute resolution programs utilizing arbitration. The Movers' and Warehousemen's Association of America, Inc. and the American Movers Conference have Commission-approved programs which are administered by the American Arbitration Association an independent nongovernmental organization. The Commission believes that the implementation and acceptance of settlement dispute programs will result in fewer complaints and less Commission involvement. For example, under the American Movers Conference Dispute Settlement Program, 45 carriers are participating members. Most of the major movers belong to this program. From February 1, 1982, to September 1, 1983, 122 requests for arbitration were receive from shippers. To date, 82 of these requests have been resolved through mediation or arbitration, thus demonstrating the ability of the parties to settle their differences without resort to the courts or the Commission.

With respect to the second goal of Congress, strengthening consumer remedies and protections, the Commission adopted rules requiring that: (1) improved, easy-to-read pre-move information be distributed to inform shippers of their rights and responsibilities; (2) shippers be fully and accurately informed of the existence and use of claims dispute resolution programs; (3) all carriers establish specific customer compliant and inquiry handling programs; (4) shippers be permitted to observe any weighing of a shipment; (5) shippers continue to permit shippers to obtain delivery of a shipment upon payment of 110 percent of the estimated charges when the shipment moves on a non-binding estimate, and to have at least 30 days to pay any balance due. As stated earlier, the Commission has recently reopened the Ex Parte No. MC-19 (Sub-No. 36) proceeding to review the need for changes in current rules, if warranted.

IMPACT OF ACT ON THE INDUSTRY

The third legislative objective calls for carrier flexibility in pricing of service. A wide variety of new price and service options have emerged. Various forms of discounts and diverse service plans have become widespread, and many carriers have entered into negotiated contracts.[2] Binding estimate programs are offered by a number of household goods carriers. These programs may be used to meet competition and to penetrate new markets, thereby providing discounts to individual C.O.D. shippers as well as corporate accounts.

The offering of guaranteed service dates and liquidated damages to the shipper in the event of delayed service is becoming a common practice. Generally, carriers who offer such guarantees provide for compensation at the rate of $100 to $125 for each day a shipment is delayed in delivery or pickup. Carriers are also developing programs designed to improve customer relations, such as offering post-move assistance to families settling in new communities.

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[1] See page 39.

[2] ICC grants of contract carrier authority to transport household goods for corporate shippers nationwide were upheld by the U.S. Court of Appeals for the Fifth Circuit in *Global Van Lines, Inc.* v. *I.C.C.*, 704 F.2d 829 (5th Cir. 1983).

All of the major carriers are offering what is generally referred to as value liability protection. This is an added option, offered at an additional charge, which differs from the manner in which carriers customarily assume liability for loss and damage. Prior to offering this option, the liability of carrier was generally limited, with respect to each article in a shipment, to a maximum of the actual cash value of each article as of the date the carrier received it for transportation. Now, under full value liability protection, a shipper has the option of being compensated on the basis of replacement cost, with the result that, if this option is selected, the shipper will be eligible to receive either a new piece of furniture or be paid an amount sufficient to purchase a new piece of furniture to replace the one that was destroyed.

Another option relating to liability was approved in No. 38752, *Petition For Declaratory Order on Deductible in Household Goods Released Rates*, served March 23, 1982. In this proceeding, the Commission interpreted 49 U.S.C. 10730 to permit motor and household goods carriers to limit their liability by publishing released rate provisions that include deductible clauses. These provisions typically produce reduced rates for the shipper. In effect, the shipper is given more flexibility in choosing the amount of insurance it wishes the carrier to provide. This decision was upheld by the U.S. Courts of Appeals for the Second Circuit on June 13, 1983.[3]

Another objective of the Act was to improve the financial condition of the industry. The most recent data released by the ICC's Bureau of Accounts show that earnings of the Nation's largest household goods carriers for the twelve months ending June 30 1983, improved, compared to the same period of the previous year. This report (attached as Appendix [4]) also compares the revenues, earnings and traffic volume for the 15 largest household goods carriers for the quarters ending June 30, 1983, and June 30, 1982.

A comparison of results for the twelve months ending June 30, 1983, and June 30, 1982, reveals the following:

Operating revenues declined 1.7 percent to $1.5 billion, as revenue tons hauled decreased 5.2 percent.

Net carrier operating income increased $3.7 million or 10.4 percent to $39.8 million.

Operating ratio (ratio of operating expenses to operating revenues) declined slightly (improved) to 97.4 percent from 97.7 percent.

Net income increased 13.5 percent, to $22.8 million from $20.1 million.[5]

Rate of return on shareholders' equity, less intangible property increased to 15.93 percent from 15.11 percent.[5]

A comparision of the second quarter operations shows that:

Operating revenues increased 1.7 percent to $397.4 million and revenue tons hauled increased 2.6 percent.

Net carrier operating income decreased $251 thousand to $9.7 million, as North American Van Lines alone reported a $2.4 million decline. However, the total operating income of the other 14 carriers increased about $2.1 million.

Net income (excluding North American) increased to $5 million from $4.1 million.

The increase in operating revenues in the second quarter of 1983 represents the first year-to-year quarterly increase in revenues for the 15 largest household goods carriers since the fourth quarter of 1981.

Regarding motor carriers of property in general, a comparison of the previously-discussed earnings data for the 15 largest household goods carriers with the earnings data of the 100 largest motor carriers of property (Appendix 2) shows that the household goods carriers reported a lesser proportionate increase in earnings for the twelve months ending June 30, 1983, versus the same period of 1982. Also, the household goods carriers reported a larger proportionate decline in revenues and a lower proportionate decrease in tonnage hauled as indicated in the following table:

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[3] *Shippers National Freight Claims Council, Inc.* v. *ICC*, Civil No. 80-4343, U.S.C.A. 2nd Cir. (1983).

[4] The appendixes where not reproducible and are in the committee files.

[5] These figures exclude North American Van Lines, since net income and return on equity reported by North American include its substantial general freight operations.

PERCENT INCREASE OR (DECREASE) 12 MONTHS ENDING JUNE 30, 1983, COMPARED TO 12 MONTHS ENDING JUNE 30, 1982

	15 largest household goods carriers	100 largest motor carriers of property [1]
Operating revenues	(1.7)	([2])
Revenue tons hauled	(5.2)	(5.8)
Net carrier operating income	10.4	33.7
Net income	13.5	20.8
Return on shareholders' equity	[3] 5.4	[4] 22.7

[1] Although the data for the 100 largest motor carriers of property include the data of the 7 largest household goods carriers, the deletion of these 7 carriers would generally have only an insignificant impact on the percent changes shown above.
[2] Decline is negligible—about two-tenths of 1 percent.
[3] Rose from 15.11 to 15.93 percent.
[4] Rose from 6.17 to 7.57 percent.

ASSESSMENT OF SHIPPER REACTION

The Commission has two primary sources of information which provide a basis for assessing shipper reaction to the innovations taking place in the transportation of household goods. These are: (1) shipper complaints; and (2) the *Moving Service Questionnaire,* which was developed by the Commission for completion by shippers subsequent to their moves as they appraise their carrier's performance. There has been a dramatic decrease in the number of complaints filed against household goods carriers since the enactment of the Act. In fiscal year 1981, there were 11,741 complaints filed, compared to 6,529 complaints filed in fiscal year 1982—a reduction of about 45 percent. For fiscal year 1983, the sharp reduction continues, with a 43 percent reduction from the number received during the prior fiscal year. The reduction in complaints reflects shipper satisfaction with the improvements and diversity of service made possible by the recent legislation.

Partially in response to a recommendation made in the previously cited GAO report to Congress and to insure that comprehensive information is available, the Commission's Office of Transportation Analysis (OTA) has designed a new study to determine the impact of both the Household Goods Act and the Motor Carrier Act on carriers and shippers of household goods. The study will utilize data from the carriers' annual reports and from questionnaires mailed to carriers (of all classes) and shippers. Specific areas of study will include, but not necessarily be limited to: types of operating authority and uses of that authority; pricing policies, such as discounts and contracts; various services, such as guaranteed pickup and delivery, full value claim protection and settlement; and carrier financial viability and the industry financial structure. A preliminary outline of the study is included as Appendix 3.

Our conclusions should include findings as to industry stability, competitiveness, flexibility of price and service options, degree of shipper satisfaction, and overall responses to the subject legislation. For the first time, this study will enable the Commission to provide detailed data on class III motor carriers of household goods. The estimated completion date for the study is June 1, 1984.

PRESENT TRENDS AND FUTURE DEVELOPMENTS

While it is still too soon to provide a definitive assessment of the Act, we are able to make some observations on current trends. There has been some new entry into the industry, and as the economy improves, we expect new entry to increase. Existing carriers have substantially expanded their operations in an effort to reduce costs through efficiency improvements. These cost reductions and the greater competition made possible by new entry will, of course, result in better service at less cost to the public.

We are witnessing the development of a significant trend toward the use of contracts by household goods moving companies. As a marketing tactic, contract carriage appears advantageous, particularly insofar as innovative pricing strategies are concerned. Several recent Commission decisions may affect this trend. In Ex Parte No. MC-165, *Exemption of Motor Contract Carriers From Tariff Filing Requirements,* 48 FR 24388 (June 1, 1983), the Commission granted the exemption of tariff filing requirements to all motor contract carriers of property. Although this decision was initially stayed by the Court, the District of Columbia Circuit of the U.S. Court

of Appeals has since lifted the stay on September 28, 1983, and the Commission's exemption order is not in effect. As a result, more common carriers may apply for contract carriage authority.

Recent proceedings involving pooling agreements between a household goods carrier and its agents should also be mentioned. In No. MC-F-15004, *Atlas Van Lines, Inc., et al.—Pooling Application*, (not printed), decided July 15, 1983, Atlas Van Lines sought approval of a pooling arrangement with its agents to supplant an existing agreement which allowed the latter to hold unrestricted operating authority. Under the new plan, the agents would not be allowed to retain their broad authority. The Commission approved the application and found that Atlas was under no obligation to pool traffic with any carrier. Opponents of the application failed to rebut the statutory presumption that the new pooling plan was in the public interest.

In a related proceeding, No. MC-F-14784, *Atlas Van Lines, Inc.—Pooling*, 127 M.C.C. 799 (1983), the Commission determined that it lacked jurisdiction over an earlier proposal of Atlas to deal exclusively with non-carrier agents. The Commission found that this previously proposed policy of Atlas to deal only with non-carrier agents was not a pooling agreement requiring our prior approval under 49 U.S.C. § 11342.

We will continue our effort to implement the Household Goods Transportation Act in accordance with Congressional intent. The Commission is dedicated to eliminating unnecessary regulations and encouraging flexible, responsive, and innovative pricing. We believe the industry, as well as the public, will be the beneficiaries. At present, the Act appears to be working well, to the benefit of both shippers and carriers. We will, of course, keep you apprised of further developments and will recommend additional legislative changes as they appear warranted.

This concludes my prepared remarks, and now, Mr. Chairman, I will be happy to answer any questions you may have.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question. We heard testimony from industry representatives who charge that the ICC is attempting to deregulate the household goods industry, contrary to Congressional intent in the 1980 Act. What is your response to this charge?

Answer. I believe that the Commission is implementing the 1980 Act in accordance with Congressional intent. In this regard, it should be emphasized that the Declaration of Policy in the Household Goods Transportation Act refers to "competition and reduced regulation" as the "best means" of assuring a safe, stable and sound system of motor carrier transportation of household goods.

In accordance with the Congressional mandate, the Commission has eliminated many regulations which were deemed unnecessary or burdensome. Our agency has also reduced substantially the amount of required paperwork and has promoted maximum carrier flexibility in the pricing of service. The wide variety of price and service options which are now available is a benefit to the shipping public. The reduction in complaints filed against household goods carriers reflects shipper satisfaction with the improvements and diversity of service made possible by the 1980 legislation.

As for consumer protection, the Commission is also implementing the Act with Congress in mind. We have reopened a proceeding to seek comments on whether any of the present rules are inadequate to protect consumers. Additionally, the Commission has instituted monitoring programs to ascertain the carriers' compliance with our regulations and the effect of the Act on the industry and the shipping public.

In sum, as I testified at the recent oversight hearing on the Act: "We will continue our effort to implement the Household Goods Transportation Act in accordance with Congressional intent. The Commission is dedicated to eliminating unnecessary regulations and encouraging flexible, responsive, and innovative pricing. We believe the industry, as well as the public, will be the beneficiaries. At present, the Act appears to be working well, to the benefit of both shippers and carriers. We will, of course, keep you apprised of further developments and will recommend additional legislative changes as they appear warranted."

Question. In February, after 8 months of consideration, the ICC served its decision in the Atlas Van Lines, Inc.—Pooling case (MC-F-14784). Atlas therefore is now able to implement its proposed pooling agreement with its agents. Why did it take so long for ICC to resolve this issue? Do you think this new pooling agreement will have any adverse competitve consequences?

Answer. Two separate proceedings involving Atlas and its agents were under consideraton by the Commission during this time. In view of the complexity of the issues raised in these multiple proceedings, the time involved in developing the record and deciding these cases does not appear excessive.

The first proceeding, No. MC-F-14784, Atlas Van Lines, Inc.—Pooling, initially involved the proposed modification of an existing pooling agreement between Atlas and its carrier-agents. By decision dated February 22, 1982, an employee review board approved, the proposed modification of the pooling plan.

On March 30, 1982, Atlas announced a new "policy" under which it would pool only with noncarrier-agents. Its carrier-agents were given five options to divest themselves of their operating authority or, in the alternative, to sever their relationship with Atlas. On June 11, 1982, a number of Atlas' agents filed a petition to reopen the pooling agreement proceeding, No. MC-F-14784, and to institute an investigation on the ground that Atlas' policy, announced on March 3, 1982, was anticompetitve. On June 18, 1982, Atlas moved to dismiss the petition to reopen, since the March 30th policy had not yet been implemented, and would not be implemented until Atlas withdrew from its existing pooling plan.

By decision served September 3, 1982, the Commission granted Atlas' motion to dismiss, but instituted a declaratory order proceeding in Finance Docket No. 29972, *Declaratory Order—The Applicability of 49 U.S.C. § 11342 to Agreements Between Household Goods Carriers and Noncarrier Agents.* The major issue in the declaratory order proceeding was whether Atlas' proposed policy of pooling solely with noncarrier-agents was subject to the Commission's jurisdiction. Under 49 U.S.C. 11342, the Commission may approve pooling agreements only between carriers. Although the agents themselves would be noncarriers, Atlas' pooling would permit them to transfer their existing authority to commonly-controlled affiliates.

A considerable amount of public comment was generated by the notice instituting the declaratory order proceeding. Comments were filed by several governmental entities, individual agents of major van lines, groups of agents, and several van lines. The Commission decided that the use of separate corporate structures, as proposed by Atlas, was consistent with the legislative purpose of section 11342. Those agents electing to continue their affiliation with Atlas could be viewed as bona fide noncarriers. Therefore, the Commission determined that Atlas' proposed policy of pooling with noncarrier-agents was outside the scope of its jurisdiction, and that it was not the appropriate forum for consideraton of the competitve issues raised.[1] The Commission's decision was served on February 22, 1983.

I submitted a separate expression indicating reluctant agreement with the majority regarding the Commission's lack of jurisdiction over agreements between a carrier and non-carrier agents under 49 U.S.C. § 11342. However, I expressed concern over the likely adverse effects of the Atlas policy on its agents and the possible anticompetitive impact on the industry in general. I further noted that close monitoring of the situation was warranted so that we would be in a position to recommend legislation if that action is called for.

This Atlas policy to pool only with noncarrier-agents was not fully implemented, however, because in November 1982, during the pendency of the declaratory order proceeding, Atlas filed a separate proposal to modify its existing pooling agreement. This proceeding was docketed as No. MC-F-15004, *Atlas Van Lines, Inc., Et Al.—Pooling Application.* Under this proposal, Atlas would pool with carriers holding certain limited amounts of operating authority. Agents holding broader authorities would be required to relinquish it or else sever their relationship with Atlas.

In view of the pendency of the declaratory order proceeding, consideration of the new pooling application was held in abeyance. After service of the Commission's decision in the declaratory order proceeding, notice of the modified pooling plan proposed by Atlas was published in the Federal Register on March 21, 1983.

A decision on the merits was reached on July 15, 1983, and served on July 21, 1983.[2] A majority of the Commissioin approved the modified pooling plan largely on

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[1] The Commission's decision was appealed to the District of Columbia Circuit Court of Appeals in No. 83-1210, *Rothery Storage and Van Co., Et Al.* v. *Interstate Commerce Commission and United States of America.* However, the Commission's general Counsel has been contacted by appellants' representative, who has indicated that he will seek to dismiss this appeal and instead pursue an antitrust action against Atlas.

[2] The Commission's decision is administratively final and has not been judicially appealed.

the basis of a statutory presumption, added to 49 U.S.C. § 11342 by the Household Goods Transportation Act, under which a proposal is presumed "not to restrain competition unduly" if the practices to be carried out are the same as, or similar to, practices under agreements existing in the industry before October 15, 1980. Because the proposed pooling agreement allegedly contained terms and conditions similar to previoius pooling combinations, except with respect to the type of carrier with which Atlas would pool, the majority found that Atlas' proposal was governed by the statutory presumption.

I dissented in this proceeding for two reasons. First, I was not persuaded that Atlas should be given the benefit of the presumption set forth in 49 U.S.C. § 11342(b)(2), because there was no reliable evidence to support a finding that the proposed agreement was "the same or similar" to earlier sactioned pooling agreements. Absent such evidence, the presumption is not applicable. However, even assuming, for the sake of argument, that the provisions in the proposed Atlas agreement are identical to those in the old Atlas agreement, the restriction as to participants is sufficient to render the proposed agreement dissimilar and thus preclude resort to the statutory presumption.

In addition, absent the presumption, the statutory procedure calls for a hearing, if the new agreement is of major transportation importance or there is a question as to whether the agreement will unduly restrain competition. The majority admits that the agreement is of major transportation importance. There are also contentions that the agreement will reduce the number of competitors Atlas will have to face in the market-place. Under the circumstances, the hearing process should have been followed, as mandated by 49 U.S.C. § 11342(b)(1), so that the Commission could render an informed decision based upon a full and complete record.

Senator DANFORTH. Gen. Harold Small.

STATEMENT OF MAJ. GEN. HAROLD I. SMALL, U.S. ARMY, COMMANDER, MILITARY TRAFFIC MANAGEMENT COMMAND, DEPARTMENT OF DEFENSE, ACCOMPANIED BY ROBERT WALDMAN, DEPUTY DIRECTOR OF PERSONAL PROPERTY; AND MICHAEL GIBONEY, COUNSEL

General SMALL. Good morning, sir. I am Maj. Gen. Harold Small, Commander of the Military Traffic Management Command. With me today are Mr. Robert Waldman, Deputy Director of Personal Property at our headquarters, and our attorney, Mr. Michael Giboney.

The DOD appreciates this opportunity to make a statement and answer questions regarding the Household Goods Transportation Act of 1980. The Military Traffic Management Command operates the worldwide household goods program for the Department of Defense. It establishes programs and policies, centrally negotiates all rates, and continuously monitors the program.

The military services execute the program through their 300 shipping officers around the world following the policies, regulations and procedures established by the Military Traffic Management Command. The detailed statement I have submitted for the record presents a synopsis of the Department of Defense's experience with the moving industry since the passage of the Household Goods Transportation Act of 1980.

The three stated purposes of the act have assisted the Department of Defense in saving taxpayer dollars while providing the best possible moving service for our military members. These purposes are: the fostering of competition, protecting shippers, and reducing unnecessary regulation. These areas are addressed specifically in the statement and general comments concerning deregulation are offered.

The Defense Department has experienced more rate competition among carriers since the passage of the act. Individual carriers are taking more independent action in their dealings with the Department of Defense. MTMC is currently proposing further independent action by issuing its own rate solicitation. This proposal complies with the letter and spirit of the Household Goods Transportation Act of 1980 by promoting independent pricing, protecting the shipper, and reducing paperwork.

The DOD reweigh program is working. It benefits the Government, the taxpayer, and, most importantly, the service member. Individual carriers appear to be satisfied and, to my knowledge, at least in the last 4 months we have had no complaints. Also, we have derived approximately $3.1 million in savings based upon this reweigh rule in the last fiscal year.

The Household Goods Transportation Act of 1980 has fostered competition, provided protection for the shipper, and enabled individual carriers to operate in an independent manner. Most importantly, it has enhanced the Department of Defense's ability to procure quality moving service at the lowest overall cost to the taxpayer.

Sir, I appreciate the opportunity to appear before the committee today and will be happy to answer any questions you may have.

Senator DANFORTH. Thank you very much, General.

Do you think that the Department of Defense should be subject to regulations issued pursuant to the Household Goods Transportation Act?

General SMALL. I think that they should be subject to regulations, providing we can get quality service for our soldiers and members of other services in their moves, that we are getting the best cost per shipment that we can, and that due to the regulations we have to operate under internally within the Department we do not put unnecessary financial burdens on our service members.

Senator DANFORTH. That sounds like no to me.

General SMALL. I do not believe it is, no, sir. I believe as long as it makes sense——

Senator DANFORTH. As long as you want it?

General SMALL. Not necessarily. As a example, if you will, on the reweigh program, as you know, our service members are restricted to ship *x* number of pounds of household goods based upon their grade. If they go over that they have to pay out of their pockets.

In the reweigh program we pay the lower of the two weights. This keeps the added cost down to the service member and still, I think, gives the carrier the remuneration he is due for the service provided.

Senator DANFORTH. The industry believes that DOD imposes significant paperwork requirements. Do you have a view on that? Is the Department of Defense concerned about paperwork requirements or not?

Mr. WALDMAN. Sir, as we testified last year, we feel we have reduced paperwork requirements significantly since the passage of the act in 1980.

Senator DANFORTH. Do you continue to make an effort to reduce them?

Mr. WALDMAN. Yes, sir. We look at it constantly. We have since we testified last time simplified tremendously the rate filing documents that the carriers are required to submit.

Senator DANFORTH. Do you communicate with the industry in this regard?

Mr. WALDMAN. Yes, sir.

Senator DANFORTH. And give them an opportunity to air their concerns?

Mr. WALDMAN. Yes, sir. In fact, we are now in the process of attempting to establish an automated filing program for domestic rates similar to the way we have our international rates filed. We meet with the special committee from the industry to discuss and develop these programs.

Senator DANFORTH. General, why do you think that the industry thinks that it has a problem with the Department of Defense?

General SMALL. I recognize at least in the 4 months I have been in command there are some irritants between the industry and the Department of Defense. We have started a program recently where we meet with various members of the industry at the executive level—myself and them—in an attempt to be more open, to remove some of the irritants and get down to doing business in a very businesslike manner.

Hopefully this will have some impact on the relationship and hopefully improve the relationships that we now have. I look for great things to come from that. We had a meeting here about the last of October. We have another one scheduled for the first part of December. And I think if we discuss the problems that we may have at the higher level, the executive level, we can probably overcome some of the irritants and the relationship will improve.

Senator DANFORTH. General, thank you very much.

General SMALL. Thank you, sir.

[The statement follows:]

STATEMENT OF MAJ. GEN. HAROLD I. SMALL, DEPARTMENT OF THE ARMY

Mr. Chairman, members of the Committee, I appreciate this opportunity to appear before the Committee to make a statement and answer your questions regarding the "Household Goods Transportation Act of 1980." I am the Commander of the Military Traffic Management Command (MTMC). One of the Command's functions is to manage household goods shipments worldwide for the military and civilian personnel of the Department of Defense (DOD). The DOD relies on commercial carriers for this transportation and has a responsibility to comply with the Act and promote policies which further the Act.

The DOD is the Nation's largest single shipper of personal property with 955,000 shipments moved in fiscal year 1983 at a cost of over one and one-half billion dollars. Due to the magnitude of the personal property program, the DOD has established procedures for the selection of carriers, distribution of traffic, computation of charges, and quality control. The DOD uses those carriers with operating authority from the Interstate Commerce Commission (ICC). This traffic is distributed in such a manner as to reward carriers who provide quality service at low cost. The costs to DOD are derived from rates submitted voluntarily by commercial carriers under Section 10721 of the Interstate Commerce Act. A program of this magnitude requires effective control at both the local and national level.

Our goal in managing this program is to obtain the highest quality service possible at the lowest overall cost to taxpayers. Accomplishing this goal is a delicate task, due to the morale implications of moving members' personal possessions successfully within budgetary restraints. The quality of personal property moves has a direct effect on the quality of life of servicemembers and their families. Good moves keep families happy and contribute to the reenlistment and retention of our highly

trained people within each of the military services. Recent improvements in the program are reflected in a current downward trend in the number of complaints from service members. It is an important program which requires continuous and intensive management.

The Household Goods Transportation Act of 1980 has had a considerable impact upon the moving industry. Of particular significance to the Defense Department are those provisions which foster competition, emphasize protection of shippers, and reduce unnecessary regulation. Since passage of the Act, MTMC has undertaken several independent actions directly with individual carriers. Currently, MTMC is proposing another such action by modifying the procedures we currently use to acquire rates for the interstate shipment of household goods.

Our proposed modification entails issuance of an MTMC solicitation which contains baseline transportation rates, additional service rates, and uniform rules which carriers can use for independent pricing. There are two major reasons, each equally important, for the proposed modification. The first is the significant advantages which will lie in DOD's control over and management of its own solicitation document. The second reason is that MTMC's use of its own solicitation document will bring DOD household goods transportation procurement much more in line with federal procurement regulations and policies. I will address each of these reasons separately and will be happy to answer any questions.

HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

Our solicitation will comply with the spirit and letter of deregulation legislation through fostering competition by independent carriers action, and reducing paperwork.

The solicitation contains no tonnage incentive provisions, but relies upon marketplace competition to establish rates, which is common to free enterprise. Carriers now may submit any "percentage of" the baseline rates contained in our solicitation. MTMC's filing instructions are unique among procurement methods in that carrier not only is permitted to specify his own rates during the rate submission period, but also may agree to provide service at another carrier's rates during the rate equalizing period, and share equally in the tonnage awarded at that rate level. This policy has been employed by MTMC in other household goods transportation programs. It helped to foster a healthy moving industry during a period of recession when commercial sector movements were declining, and allowed individual carriers to exercise maximum traffic management flexibility in offering rates which were cost effective to the DOD but still profitable for the carriers.

Our solicitation will also reduce paperwork by replacing, at a minumum, three publications issued by three separate rate bureaus and, at a maximum, up to 657 publications issued by individual carriers.

CONTROL AND MANAGEMENT

Under the Armed Services Procurement Act (10 U.S.C. SS 2301-2316), we are required to stress competition in the procurement of services for the DOD, and to make awards which will be most advantageous to the United States, with due consideration to price and other factors.

The issuance of a government solicitation, such as the one proposed by MTMC in this instance, conforms to federal procurement policies. I know of no other federal procurement programs which purchase services through an intermediary which collectively sets rates with some form of immunity from the antitrust laws. In the interest of increasing competition DOD must acquire rates for these services under procedures which are more in line with those used by other agencies procuring competitive services directly from individual firms.

In testimony before this Committee last year, MTMC was challenged by the household goods carrier industry for our policy regarding the correct weight to be used when household goods shipments are reweighed. We believe that the correct and accurate weight of a reweighed shipment is the lower of the two weights, and we pay the carrier on the basis of that lower weight. The ICC's rules, on the other hand, permit carriers to bill on the basis of the second weighing, whether it is higher or lower than the original weight. The ICC, on its own initiative, reviewed our policy and ruled that DOD does have the legal right to use its own reweigh rule. This ruling was subsequently upheld in federal court. MTMC's concern is to procure quality moving services for DOD members. Obtaining accurate shipment weights is an important part of that service. Not only does our reweigh program protect servicemembers from paying additional charges, but it also benefits the Government and taxpayers. It increases the morale of our members, and saved the government

an estimated 3.1 million dollars in additional costs in fiscal year 1982 alone. The program is working and we have had no complaints from individual carriers of problems in reweighing DOD personal property shipments.

CONCLUSION

The Household Goods Transportation Act of 1980 has had a postive impact on DOD. It has increased competition, helped to protect the government as a shipper, and reduced unnecessary regulation. Carriers are permitted to market their services aggressively, providing desirable opportunities for both carriers and shippers. Carriers now have the flexibility to provide good service to individual shippers and meet specific demands for quality and price. The Act encourage shippers to deal more directly with individual carriers, and offers a unique opportunity for increased competition. These factors enhance the Defense Department's ability to procure quality transportation services at a reduced cost to the taxpayers. We believe the Act fosters competition and improved service.

Mr. Chairman, thank you for this opportunity to present a statement to the Committee. I will be happy to answer any questions.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question. In your view, has DOD been successful in obtaining the highest quality household goods moving service possible at the lowest overall cost to taxpayers?

Answer. The DOD does not receive the highest quality service at the lowest overall cost.

Our efforts to obtain the best possible service at the lowest overall cost has been thwarted by the continued existence of carrier collective ratemaking through rate bureaus. The bureaus have antitrust immunity which enables them to collectively set prices. Prior to the enactment of the Motor Carrier Act of 1980 and the Household Goods Transportation Act of 1980, the collective prices set by the Bureaus for member carriers were subject to close scrutiny by the Interstate Commerce Commission, which could declare unreasonable and discriminatory rates to be unlawful. Since the rates offered to the DOD by the bureaus tended to closely track the tariff rates on file with the Commission, there was substantial assurance that the rate offers being received were at a reasonable level.

Since those acts were passed, however, the Commission has ceased its close scrutiny of the tariffs filed by these bureaus. Since 1979 the Commission has not suspended, or even investigated, any household goods rate increase. As a result, the commercial line haul rates filed by the bureaus for their member carriers have increased 84.6 percent during the period January 1979 through June 1983. This increase is twice the rate of inflation and, in the opinion of the DOD, bears no relationship to actual carrier costs which have been stable or declining for the past two years.

Under our past procurement procedures, the individual carriers could and did rely on the collective rates submitted by the bureaus; with the result that competitive pricing, a fundamental aim of the deregulation statutes, was not being achieved. Carriers could exercise independent pricing action, and the number of carriers doing this has been steadily increasing. Nevertheless, over 40 percent of our military bases which ship household goods have received no independent rate offers, and over 50 percent of the DOD-approved interstate carriers did not offer any independent rates. Consequently, it is the opinion of the DOD that the planned changes in our procurement methods will result in lower overall costs to the DOD, with no degradation of quality service, since the new methods will promote independent, competitive pricing and competition in the quality of service among the carriers seeking DOD business.

Question. You stated that the DOD's modified procedure for acquiring rates will foster competition by independent carrier action. The industry, however, sees this new procedure as a layer of new regulation. Further, the industry charges that DOD is telling the industry what it will pay for services before the extent of the services has been determined and that such an approach smacks of price fixing. What is your response to these charges?

Answer. The DOD goal is to procure household goods moving services through competitive bidding procedures which is the standard norm for government procurement in other fields. The DOD action will not affect the commercial ratemaking now performed by the bureaus.

The DOD solicitation will allow competition to regulate prices just as it does throughout almost all other areas of our free enterprise economy. Each carrier can independently do its own pricing of line haul and packing/unpacking services. While the DOD and the individual carriers will agree on a price for the services being purchased this is normal in any purchase of goods or services and is not price fixing. The DOD will establish charges only on a limited number of services where independent pricing is presently not feasible and it is hoped that even this can be eliminated as individual carriers become accustomed to doing their own pricing. This procurement is substantially the same as that of commercial national account shippers who achieve the same results through contracts with household goods carriers. Both seek to tailor rates and service to a particular shipper's needs, and both are a natural outgrowth of the new regulatory and economic environment in which shippers and carriers now operate.

The DOD is not a regulatory agency and does not regulate carriers as such. The carriers are being requested to conform to procurement methods which the DOD believes necessary to protect the interests of the taxpayers. Thus, we must respectfully disagree that this amounts to a new layer of regulation.

Question. We will hear testimony later from industry representatives that DOD imposes significant paperwork requirements on carriers. What specific efforts has DOD undertaken to reduce paperwork burdens on the industry?

Answer. The DOD is complying with the intent of Congress to reduce the paperwork burden by introducing the following changes in conjunction with issuing our solicitation. First, our solicitation represents a single standard document containing uniform rules and baseline rates, which all 665 carriers may use to express their rates, since each individual carrier has to file its own unique response. Second, we have implemented a new tender format containing all rates for a personal property shipping office, replacing the possibility of up to 49 separate tenders. Third, we have developed an automated rate system to be implemented during June 1984 to replace the present manual system. This should greatly reduce paperwork costs and work load burdens on the carrier.

Question. Will the new paperwork required by the Interstate Rate Solicitation create an added paperwork burden for carriers?

Answer. While we agree that the requirement under our solicitation for all carriers to file during the rate establishing period will represent an increase in the number of rates filed, the changes mentioned in the response to Question 3 will substantially reduce the paperwork burden and will increase competition at the same time.

Senator DANFORTH. Matt Scocozza.

STATEMENT OF MATTHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY EDWARD RASTATTER, CHIEF, REGULATORY POLICY DIVISION; AND VICTORIA DAILEY, ECONOMIST

Mr. SCOCOZZA. Good morning, Mr. Chairman. I have with me Victoria Dailey and Edward Rastatter of the Regulatory Policy Division of the Department of Transportation.

During the past 3 years, household goods carriers have been operating in a more flexible, more competitive environment provided by the reforms of the Household Goods Transportation Act of 1980 and the Motor Carrier Act of 1980. I am pleased to report that both sets of reforms are working well in the household goods sector.

Household goods carriers have taken advantage of these legislative reforms to streamline their operations and provide shippers with new and improved services as well as engaging in more competitive pricing.

Between 1980 and 1982, household goods carriers' performance improved in a number of dimensions besides pricing. In particular, Interstate Commerce Commission data show an improvement in the percentage of shipments delivered on time and a decline in the average number of days required for carriers to settle claims.

More competition, more operating flexibility, and the right to guarantee good service have had the effect intended by Congress. Household goods customers are getting better service. Throughout difficult times the household goods industry has improved its reputation for quality and should be commended for its efforts.

Like the trucking industry in general, the past year was one marked by depressed tonnage for household goods carriers. However, we are now seeing signs of recovery for these carriers as the overall economy improves.

While the major household goods carriers have continued to be more profitable than other large trucking firms, we have yet to analyze the impact of the reforms and the recession on small class III motor carriers. We hope to have results of our recent survey by the end of November 1983.

Finally, although many of the reforms intended by the Household Goods Act have been very successfully implemented, we believe that there is one important area where more could be done—the reduction of the paperwork burden. The past 3 years have demonstrated that increased competition and operational flexibility can do a good job of insuring that consumers' moving needs are well met.

We understand that the ICC is planning to take another look at its extensive household goods regulations. Members of the moving industry who deal with these rules on a day-to-day basis have made clear that relatively little paperwork burden has been removed from their operations so far.

The evidence to date suggests that guarantees, service options, and competitive rates offered by the carriers themselves rather than heavyhanded regulation and its associated papershuffling have been the best means to provide customers with quality household goods service. Consequently, we believe that the time is right for the ICC to institute a new approach to this area of household goods regulation.

In summary, we believe that reform is working well and that as the economy continues to recover the many carriers who have already taken measures to improve their efficiency and responsiveness to consumer needs will begin to see those efforts rewarded by enhanced profits.

That concludes my prepared remarks, Mr. Chairman.

Senator DANFORTH. The industry believes that the ICC is acting contrary to the intent of the 1980 act—that it is deregulating contrary to that act. Do you have an opinion on that?

Mr. SCOCOZZA. Is there a particular area that you are thinking about or just in general, Mr. Chairman?

Senator DANFORTH. In general.

Mr. SCOCOZZA. I think the administration has been satisfied that the Interstate Commerce Commission has been aggressively pursuing the mandate of the Motor Carrier Act of 1980.

There are areas of the Motor Carrier Act that we would have preferred more action or faster action, or more expeditious handling of particular items, but in general the administration is relatively satisfied with the implementation of the act.

Senator DANFORTH. Do you think that the ICC is living within the spirit of the act and with the intent of Congress?

Mr. SCOCOZZA. In a general sense, Mr. Chairman, yes.

Senator DANFORTH. Do you think that binding estimates are a good deal for people who are shipping household goods?

Mr. SCOCOZZA. I would say, Mr. Chairman, my own personal opinion is that binding estimates provide a good opportunity for a shipper to shop around among alternative carrriers.

I remember the only time I ever used a household goods carrier that option was not available to me, and I think when I was trying to plan my future and my finances I would have liked to have had the security of knowing exactly how much it was going to cost. I would have enjoyed that alternative being available to me. But it is certainly not the only option that is available to a consumer.

Senator DANFORTH. Do you advise it? If somebody called you up and said, "Hey, I am going to move to Kansas City," would you advise that they get a binding estimate?

Mr. SCOCOZZA. I would probably give them the advice that if they got a binding estimate they would know exactly what their financial responsibilities were going to be, but they could also take their chances with respect to a rate based on weight. They should explore all possibilities, and I think that is what happens in a consultation with a shipper, a household goods customer, and the carrier.

They sit down and explore all of the options and say that it could be as low as this or it may be as high as this, or we can give you a set price of $1,000. Then I think it is for the consumer to sit down and look at his or her own finances and decide what flexibility they may like or what assurances they would like.

I always like the assurance of knowing exactly how much something is going to cost, so I would personally probably choose a binding estimate.

Senator DANFORTH. What is your view of the situation with the Department of Defense? Should it be a law unto itself, as always? Or under some kind of control.

Mr. SCOCOZZA. Mr. Chairman, the Department of Defense personnel amount to approximately a third of all the moves—am I correct on that—approximately one-third of the moves in the country. So it is something that should deserve close attention.

But the situation that I am concerned about is the paperwork burden. As my testimony stated, I think that the Interstate Commerce Commission should streamline the paperwork burden that it imposes. If the individual carrier has those paperwork burdens that are already a tremendous amount of work for them today, and on top of those there is even one sheet of paper that the Department of Defense might impose, I think that is excessive.

So I think the multitude of papers that are required—I mean, I think we have to look at regulations from the carrier's perspective as well.

Senator DANFORTH. What if the Defense Department says well, that is too bad; we like a lot of paper?

Mr. SCOCOZZA. Well, I think we are unfortunately not in a situation where the Interstate Commerce Commission can in fact impose its regulations on the Department of Defense. It becomes a tug of war between the two. I think perhaps direction from Congress might be in order.

Senator DANFORTH. You are suggesting legislation?

Mr. SCOCOZZA. Although I am not well versed in the specifics which might be addressed, my offhand personal recommendation would be that perhaps legislation would be in order to resolve the carriers total paperwork burden.

But I think that would have to happen in manner similar to the situation that occurred in 1980 with this committee having deep consultations with the carriers, the Interstate Commerce Commission, the Department of Transportation, and the Department of Defense, to see if something can be done to streamline the paperwork burden on the carrier, which of course ultimately imposes cost burdens on the consumer.

Senator DANFORTH. Are there any other areas where you think legislation might be called for?

Mr. SCOCOZZA. Not at this particular time, Mr. Chairman. The one area that is of tremendous concern to us at this time is the paperwork burden.

But I have a lot of confidence that the Interstate Commerce Commission in the process of MC–19, the new proceeding that they have started, might resolve that problem.

Senator DANFORTH. Good. Thank you.

Mr. SCOCOZZA. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF MATHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and members of the Committee, thank you for inviting the Department here today to discuss the Administration's views on economic regulation of household goods carriers.

During the past three years, household goods carriers have been operating in the more flexible, more competitive environment provided by the reforms incorporated both in the Household Goods Transportation Act of 1980 (Household Goods Act) and in the Motor Carrier Act of 1980 (MCA). I am pleased to report that, as Secretary Dole testified in September concerning the trucking industry in general, reform is working in the household goods sector as well.

The evidence we have seen strongly suggests that household goods carriers have taken advantage of these legislative reforms to streamline their operations and provide shippers with new and improved services, as well as engaging in more competitive pricing. For example, binding estimates and guaranteed pickup and delivery have proven very popular with consumers. These two practices were specifically authorized by the Household Goods Act. In addition, the greater pricing flexibility provided by the MCA has encouraged independent action with regard to household goods carriers' rates.

Between 1980 and 1982, household goods carriers' performance improved in a number of dimensions besides pricing. In particular, Interstate Commerce Commission (ICC) data show an improvement in the percentage of shipments delivered on time and a decline in the average number of days required for carriers to settle claims. The average percentage of shipments delivered on time rose from 92 to 96 percent, while the average number of days required to settle claims declined from 24 to 20 days. More competition, more operating flexibility, and the right to guarantee good service have had the effect the intended by Congress: household goods customers are getting better service. Throughout difficult economic times, the household goods industry has improved its reputation for quality, and should be commended for its efforts.

As was also the case for the trucking industry in general, the past year was one marked by depressed tonnage for household goods carriers. However, we are now seeing signs of recovery for these carriers as the overall economy improves. The Interstate Commerce Commission reported a slight increase in tonnage hauled by the major household goods carriers in the second quarter of 1983 (excluding North American Van Lines, Inc., whose substantial general freight operations make data comparability difficult), and net income for the quarter for these carriers rose by about 20 percent. For the year ended June 30, the carriers reported an improvement

in average operating ratio and return on equity, although tonnage was down for the twelve month period as a whole. All but two of these major carriers included in the ICC report showed profits for the year, and the average return on equity for the group was nearly 16 percent.

As a group, the major household goods carriers continued to be more profitable than other large trucking firms. This is not meant to imply that all carriers in the industry are doing well. We have yet to receive the results of our recent survey of small Class III motor carriers of property, to analyze the impact of the reforms and the recession on them. We expect to have those results available by the end of November 1983.

Finally, although many of the reforms intended by the Household Goods Act have been implemented in a very successful fashion, we believe that there is one important area where more could be done—the reduction of paperwork burden. The past three years have demonstrated that increased competition and operational flexibility can do a good job of ensuring that consumers' moving needs are well met, and we understand that the Interstate Commerce Commission is planning to take another look at its extensive regulations for household goods carriers, in order to further reduce paperwork burden and promote greater operational flexibility wherever feasible.

The ICC revised these regulations soon after enactment of the Household Goods Act. However, because of court review, the revised regulations did not take effect until February 1, 1982. Members of the moving industry, who deal with these rules on a day-to-day basis, have made clear that relatively little paperwork burden has been removed from their operations so far. For example, last year the National Moving and Storage Association reported to Congress that over 80 percent of the respondents to their survey had observed no decrease in the paperwork burdens they faced. In addition, FTC Commissioner Douglas recently noted that an FTC preliminary staff analysis of the household goods regulations ". . . suggests that much (if not all) of the ICC regulations might be eliminated without undue public harm." The evidence to date suggests that guarantees, service options, and competitive rates offered by carriers themselves—rather than the heavy hand of regulation and its associated paper shuffling—have been the best means to provide consumers with quality household goods service.

In summary, we believe that reform is working well and that, as the economy continues to recover, the many carriers who have already taken measures to improve their efficiency and responsiveness to consumer needs will begin to see those efforts rewarded by enhanced profits.

That concludes my prepared remarks, Mr. Chairman. I will now be glad to answer any questions you or other members of this committee may have.

Senator DANFORTH. Next we have Mr. Robert Baer and Mr. Creighton McShane.

STATEMENT OF ROBERT BAER, PRESIDENT, UNITED VAN LINES, AND MEMBER, BOARD OF DIRECTORS, AMERICAN MOVERS CONFERENCE, ACCOMPANIED BY CHARLES C. IRIONS, PRESIDENT, AMERICAN MOVERS CONFERENCE; AND BERNARD LaTARETTE, GENERAL COUNSEL, UNITED VAN LINES

Mr. BAER. Good morning, Mr. Chairman.

Senator DANFORTH. Good morning, Mr. Baer.

Mr. BAER. I am president of United Van Lines and a member of the board of directors of the American Movers Conference. Joining me at the table on my left is Mr. Charlie Irions, who is the president of AMC, and Mr. Brainerd LaTourette, general counsel to United Van Lines.

The proceedings of this subcommittee make evident the concern of Congress that the Household Goods Transportation Act of 1980——

Senator DANFORTH. Could you speak a little closer to the microphone, please?

Mr. BAER. Let me start over.

The proceedings of this subcommittee make evident the concern of Congress that the Household Goods Transportation Act of 1980 is effectively meeting its intended objectives. That concern is sincerely appreciated by the household goods carriers represented by the AMC.

We, too, are concerned about the act and, therefore, I would like to highlight a few of the most pressing issues as contained in our written statement.

First, we are concerned that in the rush to cast aside regulations which have governed our industry misinterpretations of the act could preclude the operation of household goods moving systems as we know them today. A system in which cooperation of national van lines, a network of independent agents and van owner-operators is critical to an efficient and profitable operation.

We believe Congress acted responsibly when it exempted application of antitrust laws to certain discussions or agreements between a carrier and its agents and when it enacted statutory language favoring pooling agreements between carriers and agents. We are concerned, however, that these positive steps may be countermanded by blind efforts to repeal the stabilizing provisions simply for the sake of change.

Second, we are concerned that reforms will transfer remaining regulation of our industry from the ICC to the FTC. Although the ICC has not been immune to criticism for its administration of the act, it does have experience with our industry, experience which is necessary in order for the public as well as our industry to be effectively served. In spite of our differences with the Commission, sunsetting it is not the answer.

Third, we are concerned that the damaging effect of greatly increased State taxes on the motor carrier industry is being overlooked. Registration fees, fuel taxes, and a wide range of special assessments have been imposed as States attempt to cash in on regulatory reform.

Fourth, we are concerned that one of our largest customers, the Department of Defense, believes it can function totally apart from the direction of Congress. Its rules and regulations continue to proliferate in spite of the congressional mandate in the act to reduce regulation. DOD now proposes that rate bureaus be bypassed on tariff matters, an action not provided for in the act.

Additionally, this proposed program would require all carriers to file twice as many rate tenders as is presently the case. The results are predictable—more cost, more bureaucracy, and no improvement in service.

Firm direction from Congress to both the ICC and DOD, in our view, would help us achieve an acceptable middle ground between the restrictive regulatory environment of the past and the costly confusion which uneven application and capricious interpretation of the act have caused over the past 3 years.

Specifically, our recommendations are as follows. No. 1, that you, Mr. Chairman, and this subcommittee correspond with the appropriate DOD personnel reminding them of their lawful responsibility under the act to seek new ways to reduce regulations. Their actions in the past 3 years clearly suggest they continue to increase

our regulatory burden contrary to the provisions of the act and the intent of Congress.

No. 2, that a similar directive be sent to the ICC reminding that body of its obligation under the law, particularly in the pricing area, where Commission inaction and lack of clear policy guidance directly impacts our industry's three-tier structure—that being the national van lines, the network of independent agents and van owner-operators.

No. 3, that the subcommittee coordinate with other appropriate congressional committees on the issue of Federal and State taxes affecting our industry, an issue we believe that is largely out of control.

Mr. Chairman, on behalf of the AMC we thank you for providing a forum for these remarks and listening to our recommendations.

[The statement follows:]

STATEMENT OF RICHARD L. RUSSELL, PRESIDENT, AERO MAYFLOWER TRANSIT CO., INC., AND CHARLES C. IRIONS, PRESIDENT, AMERICAN MOVERS CONFERENCE ON BEHALF OF THE AMERICAN MOVERS CONFERENCE

INTRODUCTION

Mr. Chairman and members of the Subcommittee: My name is Richard L. Russell. I am president of Aero Mayflower Transit Company, Inc., Indianapolis, Indiana and chairman of American Movers Conference Board of Directors. Accompanying me today is Charles Irions, president of the American Movers Conference.

The American Movers Conference (AMC of Conference) is a national trade association of the household goods moving industry, representing carriers and agents of all sizes on whose behalf it customarily appears in proceedings before the Interstate Commerce Commission, the courts, and other federal agencies. Its members transport over 90 percent of the household goods moved in interstate commerce. It is a non-stock, non-profit, corporation organized and existing under the laws of the District of Columbia with offices at 400 Army-Navy Drive, Arlington, Virginia 22202.

The Conference appreciates this opportunity to appear before the Subcommittee for its oversight hearing on the impact of Public Law 96-454, the Household Goods Transportation Act of 1980.

OVERVIEW

The Conference continues to support the tenets of the Household Goods Transportation Act (HGTA or Act) and the Motor Carrier Act (MCA) of 1980. We know that when Congress enacted these regulatory reform bills, the views of many diverse interests were considered, and that, as a result, the provisions that become law represented a well-balanced compromise that accommodated the interests of the industry while continuing to protect the public. However, we believe that the acts would work better both for the industry and the public if the interstate Commerce Commission (ICC or Commission) and the Department of Defense (DOD) would administer and implement the acts as intended by Congress.

In prior oversight testimony before the Subcommittee in October, 1981, and again in December 1982, we expressed our concern over the manner in which the Act was being administered and the perceived failure of the Interstate Commere Commission and the Department of Defense to fulfill their obligations under the Act. In the three years since the Act has been in effect and two years following the first oversight hearing, the situation continues unchanged, and has in some areas worsened. We would respectfully submit our members concerns: Is Congress listening? Are oversight hearings meaningful? Is there really any concern on the part of Congress as to the effects of legislative and regulatory changes on our industry as long as we move toward total deregulation?

Contrary to some proposals that have been made to end ICC regulation, we do not believe the Commission should be sunsetted. There is an essential place for the ICC in any scheme of minimal and responsible regulation for motor carriers. A primary concern expressed to the Committee in this testimony, however, is that since implementation of the 1980 Acts, the Commission has not administered their statutory responsibilities in accordance with the will of Congress as expressed in the legisla-

tion, and if allowed to continue unchecked, may cause irreputable damage both to the industry and the general public.

A great deal has been required of motor carriers in the past several years. Not only has this industry had to deal with raging price competition while struggling through a crippling recession, but we have been required to cope as well with new and sometimes troubling regulatory changes brought about by the HGTA and MCA. At the same time, new federal and state taxes are threatening to cripple the financial stability of a vital segment of our Nation's transportation system.

Our purpose here today is to bring to the Committee's attention some of these problems facing the industry and in particular, to offer constructive criticism of how the ICC and DOD are carrying out their obligations mandated by Congress. We urge this Committee to provide firm guidance to these federal agencies in securing their adherence to the spirit as well as the letter of the law.

THE HOUSEHOLD GOODS TRANSPORTATION ACT WILL WORK TO THE BENEFIT OF INDUSTRY AND PUBLIC IF PROPERLY ADMINISTERED

We believe that the Household Goods Transportation Act has benefitted the public and industry where it has been properly administered and implemented. For example, one section of the Act that is working well is the dispute settlement program. Section 7 of the Act allowed carriers to establish programs to settle disputes between the carriers and shippers. The industry set up such a program, approved by the Commission, wherein disputes between the carriers and shippers in regards to loss and damage claims could be submitted to arbitration procedures administered by the American Arbitration Association. This program is currently working well and has been effective both for the shippers and carriers in settling disputes without increasing the workload on an already overburdened judicial system.

Another example of how the HGTA is working is evidenced by the significant improvement in service performance and consumer satisfaction as reflected in ICC data collected since 1980. Although a slow economy and the resulting overcapacity have likely been a contributing factor, we believe that increased service competition, made possible by the operational flexibility afforded carriers under the HGTA, has definitely resulted in better service to our consumers.

Maintaining that enhanced service competition within the efficiencies of the van-line/carrier/agent system is possible because Congress in its wisdom laid a solid foundation in Section 5 of the HGTA when it exempted application of the antitrust laws to certain discussions or agreements between a carrier and its agents. This provision enhances competition while maintaining the stability of the van line system to provide backhaul shipments. Congress also acted thoughtfully and responsibly in another area of antitrust concern by providing further insurance that the small business mover would be able to remain competitive with the larger carriers in a deregulated environment by establishing a statutory presumption in favor of pooling agreements.

Some proposals for further deregulation of the motor carrier industry would repeal these stabilizing provisions enacted by the HGTA. However, without the antitrust immunity protection provided by the current law, agents would be forced into exclusive franchise agreements with van lines in order to maintain an integrated, coordinated moving system. Likewise, without the ability to pool, smaller carriers would be restricted to a limited geographical area because of the threat of antitrust litigation.

While we take strong exception to some of the Commission's actions and inactions in administering the Act, we still believe that with appropriate direction from Congress, the ICC could be a force for good in implementing its statutory mandates. Further, in the event of future changes to the federal regulatory structure for the motor carrier industry, the AMC is adamantly opposed to the transfer of any regulatory authority over household goods carriers from the ICC to the FTC. Any such jurisdiction should remain at the ICC or other independent federal agency experienced in transportation matters.

FEDERAL AND STATE TAX BURDENS PLAGUE THE INDUSTRY: THE NEED FOR EQUITY AND UNIFORMITY IN STATE TAXATION AND REGULATION

In addition to the challenges of drastic regulatory changes, this industry has also faced another rigorous test of its survivability in the area of sharply increased taxes. This Committee is well aware of the outrage experienced at all levels of the motor carrier industry and by many in Congress in response to the exorbitant new federal use taxes enacted by the Surface Transportation Assistance Act of 1982, which are due to go into effect next year. Obtaining a more reasonable and equita-

ble pay-as-you-go alternative to the federal highway use taxes will be one of the highest priorities for the motor carrier industry in the coming year.

Federal taxes, however, are not the only significant tax issue facing the motor carrier industry today. Truck taxes imposed at the state level have virtually exploded on this industry in the past three years. Registration fees have increased in 22 states, fuel taxes have increased in 42 states and brand new special truck taxes have been enacted in 11 states. To make matters worse, we have five new retaliatory tax laws enacted in the states and five other states have expanded retaliatory tax impositions under preexisting retaliatory tax laws.

But for household goods carriers who must operate nationwide, the cumulative burden of state taxes is mind-boggling. Consider the following illustration:

To operate a typical tractor and van in the 48 states for a year, a household goods carrier must complete 290 fuel tax, third-structure tax, and miscellaneous mileage based reports. These involve 32 different formulas and 40 different forms.

If the tractor is driven 60-thousand miles during the year, the company must process approximately 300 log, mileage and fuel records and 285 fuel receipts.

The fuel accounting requires a detailed audit, as there are 34 different sets of requirements in the 38 states with fuel tax reporting laws. That's for one truck.

Clearly, Mr. Chairman, this is a tax and regulation situation that is out of control. While specific legislation to resolve these problems may not come before you, we are asking this Committee to work with other congressional committees to bring some equity and uniformity in the state tax areas.

INTERSTATE COMMERCE COMMISSION HAMPERS THE REALIZATION OF THE GOALS OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980 BY FAILING TO REGULATE RATES

Section 2(a) of the Household Goods Transportation Act of 1980, wherein Congress makes its declaration of policy, states as its first goal:

"(1) That a safe, stable and financially sound system of transportation of household goods by motor common carrier is vital to the maintenance of a strong national economy and a strong national defense;"

We submit that the inaction of the Commission in the pricing area has in fact promoted financial instability in the motor carrier industry, particularly for the smaller household goods carriers, agents and independent contractor van operators. Under the guise of encouraging innovative pricing, the Commission has allowed all types of pricing schemes to go into effect regardless of their discriminatory or predatory nature. In fact, the Commission has apparently adopted a hands-off policy toward any pricing schemes, and will neither set standards for such pricing schemes nor enforce existing standards found in current provisions of the Interstate Commerce Act. (For a detailed discussion of those provisions, see testimony of the American Trucking Associations at oversight hearings on the Motor Carrier Act, before this Subcommittee, October 25, 1983).

In the aftermath of the HGTA, the affects of regulatory reform cannot be viewed effectively without also looking at the impact of the ICC's implementation of the ratemaking provisions of the Motor Carrier Act on the household goods motor carrier industry. At present, the most serious deficiency in deregulation of household goods transportation is a lack of knowledge about the real effects of the regulatory changes brought about by both Acts upon all industry segments, including van lines and their agents (many of whom are interstate carriers in their own right) as well as the independent, unaffiliated interstate carriers, and the independent contractor van operators. The negative impact of the ICC's liberal interpretation of its statutory rate regulation responsibilities on these elements of the interstate moving systems are readily apparent to those involved in the day-to-day operations of the industry.

The Nation's individual van line systems are often viewed as single entities, with the relative economic health of the van line masking the poor financial condition of the underlying infrastructure of independent small businesses—agents and independent contractor van operators. The widespread, destructive rate competition that continues unbated in today's market, coupled with sharply escalating taxes at the state and federal levels, described in the previous section, are crippling the small agents, independent carriers and owner-operators—all of whom are small business persons.

We fear that if the situation is not reversed, the inevitable result will be reduced competition, as those elements least able to compete in the cut-throat competitive arena will disappear or be absorbed into a few large transportation systems that survive. This end is in direct contravention of the goals Congress envisioned when it fashioned the 1980 regulatory reform Acts.

In the Motor Carrier Act, Congress included competition and innovative ratemaking as desirable goals in the National Transportation Policy. Likewise, in the HGTA Congress found in Section 2(a)(3) "that maximum flexibility on the part of the carriers in pricing of their services best serves the shippers of household goods carriers and allow a variety of quality and price options to meet market demands". But those goals were to be balanced by Congress' insistence that rates be reasonable, fair, and free of discrimination and predation. Unfortunately, the Commission has allowed these statutory standards to be violated by not actively monitoring household goods carriers' pricing schemes. Using the rationale that the MCA precludes it from interfering with market forces, the ICC has steadfastly refused to restrain rate cutting or to set any standards which would guide carriers as they set rates in this difficult economic climate.

While many of these discounted rate schemes may not on the surface appear destructive, in practical application they result in individual, consumer shippers and small commercial shippers subsidizing the discounts given to large shippers.

Not only do these pricing practices hurt smaller commercial shippers and individual shippers, they also harm the independent contractor van operators who haul the shipments. Since an owner-operator is usually paid on the basis of a percentage of the line haul charge, his revenues decrease correspondingly with the amount of the reduction, thereby making it difficult for him to receive a sufficient return on his investment to update his equipment or remain in business when he is caught in the squeeze of discounting rate schemes.

In today's carriers' fleets, the average age of an independent contractor's equipment has increased due to the resulting inability to update equipment. It is our belief that if the Interstate Commerce Commission would fulfill its statutory obligations to regulate rates, the moving industry's hauling arm, our skilled and industrious independent contractor van operators, would be able to earn a fair return on their investment.

There is presently no indication from the Commission that they are concerned about the predatory and discriminatory pricing practices that have become so commonplace in our industry. We believe that Congress did not intend for the ICC to allow such pricing schemes. The zone of reasonableness provisions in the MCA were enacted so that motor carriers could increase and decrease rates without the interference of the Commission. Instead, the ICC encourages a myriad of pricing schemes which are discriminatory in practice and predatory in nature. We are fearful that if such practices are allowed to continue, it will be impossible to maintain a soundly financed and viable household goods transportation system. Consequently, we believe that Congress should give some direction to the ICC in the interest of stabilizing pricing practices and insuring sound financial household goods motor carriers.

THE ICC IS PROPOSING RATEMAKING CHANGES THAT EXCEED STATUTORY AUTHORITY AND SUBVERT THE WILL OF CONGRESS

Recently the Commission instituted a new rulemaking proceeding entitled Ex Parte No. MC-172, *Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments.* In this notice, the Commission proposes to withdraw antitrust immunity for collective ratemaking activities by motor carriers of property with respect to rates applicable to shipments under 1,000 pounds. This is a prime example of the Commission attempting to deregulate by administrative fiat and not in consonance with statutory authority.

Section 14 of the MCA enacted 49 U.S.C. § 10706(b)(2) which states:

"As provided by this subsection, a motor common carrier of property providing transportation of service subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may enter into an agreement with one or more such carriers concerning rates (including charges between carriers and compensation paid or received for the use of facilities and equipment), allowances, classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, or establishment of them. Such agreement may be submitted to the Commission for approval by any carrier or carriers which are parties to such agreement and shall be approved by the Commission upon a finding that the agreement fulfills each requirement of this subsection, unless the Commission finds that such agreement is inconsistent with the transportation policy set forth in section 10101(a) of this title."

The section goes on to establish requirements that must be met for the agreement to be approved. One of those requirements if found in 49 U.S.C. § 10706(b)(3)(D), and provides that:

"No agreement approved under this subsection may provide for discussion of or voting upon single-line rates on or after January 1, 1984, except that such date shall be July 1, 1984, if the Motor Carrier Ratemaking Study Commission does not submit its final report under section 14(b)(4) of the Motor Carrier Act of 1980 on or before January 1, 1983. This subparagraph and subparagraph (B)(i)(II) of this paragraph shall not apply to the following:

" '(i) general rate increases or decreases if the agreement gives shippers, under specified procedures, at least 15 days notice of the proposal and an opportunity to present comments on it before a tariff containing the increases or decreases is filed with the Commission and if discussion of such increases or decreases is limited to industry average carrier costs and, after the date of elimination of the antitrust immunity by this subparagraph, does not include discussions of individual markets or particular single-line rates; . . .' "

As can be seen from the foregoing, the MCA only gives the Commission the authority to accept agreements between carriers to discuss rates if they meet the criteria of the Act. If such agreements do not meet the criteria of the Act or are inconsistent with the transportation policy as set forth in the Act, the Commission can reject the agreement. Nowhere does the Act give the Commission the authority to withdraw antitrust immunity for collective ratemaking on its own.

The Commission in the subjective notice of the proposed rulemaking in the ICC Register at page 9 states:

"Collective ratemaking with regard to rates on shipments under 1,000 pounds appears to inhibit competition and unduly discourage independent ratemaking. Such a result would be inconsistent with the transportation policy of Section 101010(a) and within the broad procompetitive reforms adopted in the MCA. For these reasons, if the proposal is adopted, antitrust immunity would be withdrawn for collective ratemaking activities by motor carriers of property with respect to rates applicable to shipments under 1,000 pounds.

The Commission has completely ignored the fact that the MCA has not given it the authority to withdraw antitrust immunity. These provisions allow the ICC to accept or reject agreements between carriers and to carry out the dictates of Congress that no voting or discussion of single-line rates will be allowed after July 1, 1984 unless they come under one of the exceptions. In this proceeding, the Commission is proposing to take action which is beyond their statutory authority. If the Commission does not believe the rates of shipments of 1,000 pounds or less are reasonable, the appropriate remedy is to institute a proceeding, in accordance with Section 13 of the MCA, to determine the reasonableness of the rate levels.

This proposal represents a direct challenge to congressional authority. Congress should admonish the ICC to follow the provisions of the MCA.

EXCESSIVE INDUSTRY-CONSUMER REGULATIONS CONTINUE TO HAMPER REALIZATION OF THE GOALS OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

One of the HGTA goals most welcomed by this industry was that of reducing government rules and paperwork to the maximum extent possible. Section 6 of the Act directed the Commission to review and revise all of the household goods carrier operational regulations to achieve a minimum of regulation and paperwork consistent with consumer protection. The Commission, ostensibly in response to that direction, promulgated what it described at the time as "new and reduced" regulations. The new rules were in reality, however, just a rehash of the old regulations. In adopting these rules, the ICC rejected the industry's proposal that we start anew from a zero-based concept and try to achieve minimum essential regulation.

We will not repeat here the subjects covered in previous oversight testimony before this Committee in 1981 and 1982 dealing with this concern. However, our efforts have continued during the past year to correct the Commission's illusory implementation of Congress' goal to minimize regulation. After operating under the "new" rules for over a year, the AMC surveyed member carriers and agents regarding problems they had encountered in complying with the rules, asking whether they felt any of the requirements could be eliminated. Their responses convinced us the regulations did indeed need to be revised, and, accordingly, we petitioned the ICC on May 19, 1983, requesting the rulemaking proceeding be reopened and the rules reviewed for possible revision. On October 25, the ICC granted AMC's request to review the household goods operational regulations and published a notice asking comments on how to relieve unnecessary administrative burdens while preserving reaonable consumer protection.

The AMC continues to believe that many of the current rules make no contribution to either competitive or consumer protection, and that it would be better to

conduct a thorough review of the regulations, examining them from the bottom up and retaining only those that can be clearly justified.

CONTINUED FAILURE OF THE DEPARTMENT OF DEFENSE TO COMPLY WITH THE MANDATE OF HOUSEHOLD GOODS TRANSPORTATION ACT TO MINIMIZE REGULATION

The trend toward deregulation of surface transportation and the practical application of deregulation principles to all household goods traffic, except that moved for the military, has exposed the obsolescent and counterproductive nature of DOD's regulatory approach. The DOD apparently considers its regulatory programs for household goods carriers immune from the directions of Congress. We see this evidenced on a continuing basis as Military Traffic Managment Command (MTMC) rules and regulations multiply in spite of deregulating legislation such as the Motor Carrier Act, Household Goods Transportation Act, Regulatory Felxibility Act and Paperwork Reduction Act. We believe it is long past time for DOD to restructure its household goods transportation policies and procedures in light of the realities of a deregulated environment.

To support our position that DOD and its sub-agency, MTMC, are not complying with the will of Congress, we offered the following examples at last year's oversight hearings:

A. MTMC's Intrastate Rate Acquisition Program which requires intrastate carriers to depart from publish tariffs and submit individual rate tenders. This will not only add a new layer of government regulation, but will require additional personnel for both military and industry to administer the program

B. The Alaska Loss and Damage Program which proposes to dictate the method by which carriers transport household goods to Alaska, eliminating the carrier's option to use the method deemed best for the situation at the time.

C. The Carrier Evaluation and Reporting System (CERS) which requires an evaluation report and performance score to be proposed on every shipment in lieu of the easier method of reporting on the exceptions only.

D. The Pack and Crate Contractor Program which institutes complex quality assurance procedures that are not justified by the simplicity of the tasks to be performed.

On September 27 of this year, MTMC announced a new Interstate Rate Solicitation Program, which, in essence, parallels the Intrastate Rate Acquisition Program. As in the Intrastate Program, this proposal involves the MTMC publishing their own military basic tender which all movers must use as a reference point in filing their rates as a percentage thereof. The household goods carriers would no longer be able to file a "me-too" rate tender unless they have previously filed specific rates individually in their own name. In the past many movers have avoided this cumbersome and expensive task, but if this program is adopted, they will be required to do so twice a year.

The MTMC solicitation letter for the interstate program states that the new program would not represent any additional workload or burden on the carriers. However, it also states that over 50 percent of DOD approved interstate carriers did not participate in either the Fall or Spring filing cycles. If over 50 percent of the DOD approved interstate carriers did not participate in either filing cycle, but the new rules require them to file individually during the filing cycles, how could this requirement not increase the workload and burden on those carriers?

There is no real justification for the added layer of bureaucracy that will result from the implementation of the Interstate Rate Solicitation Program. MTMC is apparently proceeding under an erronous interpretation of the law. The principle justification underlying the MTMC action is the allegation that antitrust immunity for household goods carriers to collectively formulate the MRT tariff will expire July 1, 1984. This is simply not so. The Interstate Commerce Act, 49 U.S.C. §10706(d)(1) provides that after July 1, 1984, household goods motor carriers may continue to collectively formulate general rate increases of decreases as long as discussion of such increases or decreases does not include discussion of individual markets or particular single-line rates. The AMC has been advised by the rate bureau's counsel that the discontinuance of antitrust immunity for discussion of single-line rates on July 1, 1984, will not affect the rate bureau activities as they have been conducted in the past.

It is also interesting to note that the Department of Defense and its sub-agencies, who have in the past taken the position that the directives of the Household Goods Transportation Act and Regulatory Flexibility Act to reduce regulatory requirements and administrative paperwork, do not apply to them, now state in their solicitation letter that they are required by the Motor Carrier Act of 1980 to promote

independent pricing actions by carriers. It appears that the Department of Defense has decided selectively which laws shall apply to it.

The industry has been fortunate to receive Congressional assistance in obtaining a postponement of both the Intrastate Rate Acquisition Program and the Alaska Loss and Damage Program until in-depth reviews are completed. The General Accounting Office is conducting a study of the Intrastate Program, and the newly created Department of Defense Inspector General's Office is making a study of the Alaska Program. However, we believe that it is inappropriate for MTMC to initiate an Interstate Program which parallets the Intrastate Program before the GAO report is completed on the letter.

Needless to say, the household goods carriers are quite upset with MTMC's continued record of imposing new paperwork requirements on them. The latest proposal, the Interstate Rate Solicitation Program, deserves the same careful study as we have urged for the other new regulatory programs DOD has imposed.

Present and proposed MTMC regulatory programs not only increase costs to the household goods industry without accomplishing DOD's goal of improving members' services, but even more important for the public at large, increase the military budget at a time when other federal agencies are drastically cutting their regulatory costs.

In general, MTMC establishes new rate programs to seek the lowest rates that can be obtained from movers. Then to cure any service failures that may result from cut-rate operations, MTMC imposes stringent quality control regulation. Keeping government transportation costs to a minimum is a laudatory policy that benefits all taxpayers. However, if the dollars saved thereby are ultimately spent on costly regulatory programs, and increased staffing at MTMC, there is no saving to the taxpayers. And if, in addition, the quality of service to the military member is not raised to a comparative level with other non-military commercial traffic as a result of MTMC's multilayered regulation, the whole process has been an exercise in futility.

More regulation is not the answer to better service performance. Congress determined this prior to the passage of the HGTA and MCA. If DOD would reject the traditional regulatory approach that problems can only be solved by expending an existing program or imposing a new one, the industry would be in a much better position to provide the quality of service desired at a reasonable cost.

What is really needed at DOD is a small policymaking group for household goods transportation. This would free-up the large number of costly MTMC staff used to manage the peacetime household goods business and make them available for other DOD wartime logistic tasks.

Further, we believe that Congress should pay a role in seeing that these necessary changes do take place. To that end, Mr. Chairman, we recommend that MTMC's involvement in regulating household goods carriers be a subject of future congressional committee hearings, and we respectfully request this Committee's assistance in the matter.

CONCLUSION

The HGTA requires the appropriate authorizing committees of Congress to conduct annual oversight hearings to ensure that the Act is being implemented according to congressional intent and purpose. For the past three years we have testified before this Committee as to our concern that the HGTA was not being implemented according to congressional intent and purpose. We wish we could report here today that the situation is changing and the Commission and Department of Defense are commencing to interpret and implement the Act as Congress intended.

Unfortunately, that is not the case. The Commission appears to be following a scheme of its own to selectively deregulate the industry, particularly in ratemaking matters, which has only encouraged discriminatory and destructive competition and undermined the viability of the many small business entities that make up this industry. At the same time, however, the ICC remains in a regulator stance as far as the industry's operating regulations are concerned; and while publicly expressing the need to minimize all regulation, refrains from responding to our request for a review and revision of the long-challenged household goods rules. Likewise, the DOD continues to promote its own regulatory motives, refusing to accede to statutory directives from Congress where those directives conflict with DOD views.

The Conference therefore believes that the only way the goals of the HGTA can be achieved is for Congress to give affirmative direction to both the ICC and the DOD. We do not require either an end to ICC regulation, or a return to the restrictive regulations of the past. Congress struck an appropriate balance with the 1980

regulatory reform acts, and we continue to believe that the HGTA and MCA, if implemented as intended, would benefit both the public and the industry.

To that end, we respectfully request that the Commission direct the ICC and DOD to administer the law as written and as Congress intended to minimize regulation and ensure a financially sound household goods motor carrier industry.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question. "In your testimony, you state that the Interstate Commerce Commission has not administered its statutory responsibilities in accordance with the will of Congress as expressed in the 1980 legislation. Please provide examples to substantiate this statement."

Answer. The Interstate Commerce Commission, since implementation of the Household Goods Transportation Act of 1980, has failed to take appropriate action in some areas while, at the same time, it has exceeded its authority in others. In short, its philosophy would appear to be one of capricious administration of the Act.

The Commission appears to have adopted a "hands-off" approach to the area of pricing, permitting virtually any type of price scheme to take effect and declining to either set new pricing standards or enforce existing standards. I cite the November 17, 1983, American Trucking Associations' Summary of the November 16 ICC appearance before the House Public Works and Transportation Subcommittee on Surface Transportation. ICC Chairman Taylor was quoted as acknowledging that the Commission does have the right to suspend and investigate rates but has done very little in this regard. The Commissioners proceeded to refer to "staff recommendations" that most rate actions, whether increases or decreases, "are justified."

While ignoring most rate activity within our industry, the Commission is simultaneously overlooking the impact of destructive rate competition on sublevels of the moving business—on the small agent, the independent carrier, and the owner-operator, all of whom are small businesspeople with no recourse if a major carrier should charge rates which do not adequately compensate them for their services. In today's carrier fleets, for example, the average age of independently-owned equipment is increasing due to the contractor's inability to earn enough to update the equipment.

The net result in the ICC's disinterest in setting and enforcing pricing standards will become apparent as those elements least able to compete in the cut-throat competitive arena—small agents and independent owner-operators—are either absorbed by large transportation systems or disappear altogether. The safety implications of a steadily aging operating fleet do not need elaboration.

The ICC's failure to scrutinize the fitness of applicants for entry into the motor carrier transportation business—identifying just 9 potential problems out of 20,000 application, according to the ICC's House testimony—clearly is a disservice to shippers who cannot be certain that the many newcomers are actually capable of performing the services they are selling. I find it inconceivable that Congress intended for the ICC to preside over such deterioration of a vital link in our nation's transportation network.

At the other end of the spectrum, the ICC appears intent upon vigorously exercising—and exceeding—its statutory authority in areas which interest its members. In particular, the Commission recently instituted a new rulemaking proceeding which would withdraw antitrust immunity for collective ratemaking activities by motor carriers of property with respect to rates applying to shipments under 1,000 pounds. The Motor Carrier' Act of 1980 clearly stipulates that the ICC has authority only to accept agreements between carriers to discuss rates if they meet the criteria of the Act. Nowhere has the MCA given the Commission authority to withdraw antitrust immunity. If the Commission finds fault with such agreements, it may institute a proceeding as authorized by the MCA to determine rate-level reasonableness. Instead, the ICC is directly challenging Congressional authority, again capriciously selecting a subject it finds of interest while ignoring the deterioration of the industry caused by cut-throat pricing practices, and by an absence of entry monitoring.

The ICC has also shown little enthusiasm for the Household Goods Transportation Act mandate that government rules and paperwork must be reduced to the maximum extent possible. The Commission's "new and reduced" regulations issued in apparent response to the Act proved to be little more than a restatement of existing regulations. In its haste to promulgate its "new" rules, the ICC rejected a proposal by our industry to implement "zero-based regulations"—starting from scratch to apply only those rules and regulations which are relevant to the needs of the con-

sumer and the carrier. After the industry petitioned the ICc in May 1983 to reopen the rulemaking proceeding, the Commission finally agreed in October to publish a request for comments about how to relieve unnecessary administrative burdens while preserving reasonable consumer protection. The lack of enthusiasm on the part of the ICC for this rule-making review, however, is quite apparent.

Other examples of the ICC's half-hearted and capricious administration of the 1980 legislation abound. I elaborate on the matter of "predatory and discriminatory pricing" in responding to your second question below.

Question. "You mention that predatory and discriminatory pricing practices have become commonplace in the household goods industry. Do you have specific examples of such pricing practices that you could provide this Committee?"

Answer. I would call to the Committee's attention two types of rate situations approved by the ICC which have fostered predatory and discriminatory pricing practices in the household goods transportation industry: volume discounts; and the bidding system for military shipments.

Both of these pricing practices permit major accounts to enjoy reductions in moving costs in return for large volumes of shipments. Volume discounts offered by a carrier in some instances exceed 20 percent, while the military bidding system allows carriers to reduce rates as much as 50 percent-60 percent below full tariff rates. Although volume discounts are commonplace in manufacturing situations where the unit cost of producing a particular item may decline as the quantity produced increases, the same theory would apply to household goods moves only if a large volume of shipments moved between the same two specific points. In reality, households shipments move among an almost infinite combination of origins and destinations, and as a result the carrier enjoys no real cost saving from such volume movements. Nevertheless, cost reductions for volume business have become a "fixture" in the moving business. At the same time, however, the individual shipper who moves on average once ever five or six years does not generate such volume and thus is not entitled to volume-based reductions. Accordingly, the individual shipper must pay full tariff rates and, in effect, subsidize the high-volume traffic moving at reduced rates.

Question. "In your view, will the new pooling agreement allowed by the ICC as a result of its decision in the Atlas Van Lines case have any adverse competitive consequences?"

Answer. The Atlas Van Lines case is only one of several pooling agreements currently in existence within the household goods segment of the transportation industry. I believe it is necessary to review the need for pooling arrangements generally rather than look at one individual case.

A shipment of household goods will rarely fill one entire moving van. And yet the needs of the customer are usually such that the shipment must be handled on certain dates in accordance with customer's requirements. As a result, in order to tranport shipments—particularly long-haul shipments—in a cost-effective manner, it is necessary to transport several shipments simultaneously on the same truck. Because household goods shipments move sporadically rather than in a continuous-flow sequence, it is difficult to develop a cost-effective load which also meets the requirements of the various shipments' owners.

Pooling arrangements allow household goods carriers to service (haul) shipments for other carriers which agree to the conditions of hauling and an appropriate revenue split. As a result, carriers may combine shipments to produce a cost-effective load whose dates of transportation conform to the shippers' wishes. By thus consolidating shipments, carriers are able to collectively provide services which they would be unable to provide individually.

The net result is that, aided by pooling arrangements, certain carriers may be able to accept shipments that they would not be able to handle if the ability to consolidate shipments did not exist.

Therefore, pooling arrangements like that approved by the ICC in the Atlas Van Lines case do not create any adverse competitive consequences.

Senator DANFORTH. Thank you, sir.
Mr. McShane.

STATEMENT OF CREIGHTON McSHANE, PRESIDENT, McSHANE MOVING & STORAGE INC., AND CHAIRMAN OF THE BOARD, NATIONAL MOVING & STORAGE ASSOCIATION, ACCOMPANIED BY DR. T. PETER RUANE, PRESIDENT

Mr. McSHANE. We appreciate the opportunity of being here today, Senator, and we would like to just elaborate on our statement very briefly.

I am Creighton McShane. I am chairman of the board of the National Moving & Storage Association, and on my right is Dr. T. Peter Ruane, president of our association.

So that you can understand the context of where we come from, we represent the agents and also regional carriers in the industry today. Most of the membership of our association are the agents who represent the big 15 or so carriers in America.

We feel that we are being left at the present time between partial deregulation and total deregulation, and it is very difficult for our industry and the small business community that we represent to be able to address the future.

To that end, we are so concerned about the possibility of total sunsetting of the ICC and transfer of regulatory activity to the Federal Trade Commission that we would like to at least point out that by Chairman Taylor's own admission our industry is performing a far better service with less complaints than ever in the past. If in fact it is the wisdom of Congress to deregulate the industry and transfer all authority for consumer activities to the Federal Trade Commission, we feel that would be the absolute worst of all worlds to live in.

We feel that if you are going to be deregulated you ought to be deregulated like the rest of the American economy—free to come and go and do as you see fit—and that there are in fact laws on the books today to protect the consumer and the Federal Trade Commission can move in if necessary at that point. But we seem to be doing a better job. We see no need for further legislation or moving regulation to the Federal Trade Commission.

We have recently established a blue ribbon task force of divergent groups in our industry to explore the future because we feel as if we are in between kind of the devil and the deep blue sea, not knowing which way we are really going to go and how to prepare our industry and our people, as an association, for the future.

We are trying to attempt to train them to the concepts of change that take place in an industry that has been regulated, thoroughly regulated, for some 40 years. So we think that it is moving with moderate success since 1980. We think the paperwork burden is heavy on our industry and needs to be addressed, as others have indicated.

We think any move to further deregulate the industry is premature at this point and to ever consider transferring consumer activities to the Federal Trade Commission in lieu of the apparent good record we are performing would not be in the interest of the American consuming public.

I would like to ask our president to make a few remarks. Thank you.

Dr. RUANE. Mr. Chairman, I would like to call your attention specifically to one of the attachments to our statement or the attachment to our statement, which is a record of a proceeding conducted by the Small Business Administration this summer dealing with the Paperwork Reduction Act.

It specifically is the testimony of our chairman of the Military Affairs Committee in which he points out in very graphic ways the specific regulations that the Department of Defense requires from the moving industry, and he brought many illustrations to the hearing. I call the attention of you and your colleagues to a close study of that particular statement; I think it makes the point very well.

Thank you.

[The statement follows:]

STATEMENT OF THE NATIONAL MOVING & STORAGE ASSOCIATION

The National Moving & Storage Association is a non-profit trade association organized and existing under the General Not-for-Profit Corporation Act of the State of Virginia. Its offices are located at 124 South Royal Street, Alexandria, Virginia 22314.

NMSA has been in existence since 1920. It is the oldest national trade association in the household goods moving and storage industry. The Association's membership is comprised of some 1400 local and international movers, agents and warehousemen located throughout the United States and 56 other countries. The majority of the Association's U.S. membership are agents of the large national van lines. However, many NMSA members have individual ICC operating authority in their own right which provides them the freedom to offer transportation services to shippers without having to function exclusively under their van line's operating authority. For the most part, NMSA's members are relatively small moving and storage companies. Approximately 80 percent of NMSA's members earn $1,500,000 or less. Nearly half of the membership, about 43 percent earns $500,000 annually. The Association's membership can be accurately characterized as representative of the small business segment of the household goods industry.

PRESENT BUSINESS CLIMATE

While the present business climate of the household goods industry appears to be improving, the small business owner—the agent—continues to experience difficulty from the lingering effects of the economic recession and the regulatory confusion which still exists. Viewed just from the perspective of the largest national carriers, volume is up, and operating revenues have increased during the past six months. However, the agent and the owner-operator are bearing the burden of overcapacity in the marketplace, fighting the price wars, and dealing with the overzealous regulatory policy of the Department of Defense.

Since the enactment of the Motor Carrier Act and the Household Goods Transportation Act, many carriers have offered an expanding array of price and service options to shippers. One of the serious disadvantages of the new pricing practices is the widespread use of volume discounts. This practice discrimates against COD customers in favor of large national accounts and is adversely affecting the financial well-being of the small mover and the owner-operator.

NMSA has always embraced the goals of the Household Goods Transportation Act and prefers further deregulation rather than be operationally-hamstrung by various proposals of government "re-regulation." Legitimate questions have arisen about the future role of the Interstate Commerce Commission, and about the possibility of the consumer protection regulations governing this industry being transferred from the ICC to the Federal Trade Commission (FTC). NMSA poses the question, if the motor carrier industry is going to be further deregulated, then why is it necessary for the household goods industry to be subjected to a separate set of rules, when it is already governed by the Sherman Antitrust Act and the Federal Trade Commission Act as every other business?

Finally, NMSA questions why the Military Traffic Management Command (MTMC) of DOD continues to blatantly disregard one of the major goals of the Household Goods Transportation Act—to reduce the paperwork burden. More im-

portantly, at the very time when there appears to be a renewed deregulatory thrust on Capitol Hill and from the Administration, why is the MTMC quickly filling in the gaps with new rules, regulations and rate programs?

This is government regulatory confusion and inconsistency at its worst.

UNCERTAINTY OF FUTURE REGULATION

Earlier this year, the Department of Transportation (DOT) floated a broad-sweeping proposal to completely deregulate the surface transportation industries. Under DOT's draft legislation household good carriers are not treated separately as they are in the Household Goods Transportation Act, but instead are lumped with general commodities carriers. The Interstate Commerce Commission would also be dismantled, thus leaving a gray area concerning the consumer protection regulations governing this industry. According to the DOT plan, these consumer regulations would be transferred from the ICC to the FTC. NMSA is unalterably opposed to the transfer of the 49 CFR 1056 rules to the FTC, believing a review of the current rules might inspire additional regulations unnecessarily. On the whole, NMSA members believe that the household goods moving and storage industry's performance does not warrant separate FTC regulations no matter what the outcome of further deregulation. However, if Congress deems it necessary to retain a consumer oversight function, then NMSA advocates that those regulations stay with the Interstate Commerce Commission or its residual transportation entity and not be transferred to another agency. Moreover, there is always the concern that the states will impose additional, unnecessary consumer protection laws.

Complete deregulation, as advocated by the Department of Transportation, may adversely effect the existing structure of the moving and storage industry. Elimination of all antitrust immunity for collective ratemaking will have a serious impact on daily communications and rate setting. The van lines typically provide the operations coordination, whereas the agents actually sell and perform the services. Communication between the van line and the agents is a fundamental part of the industry's efficient networking. Absent antitrust immunity, agents will be forced into either a broker role or that of an exclusive "franchise" operator. The present integrated transportation system would obviously suffer. NMSA is particularly concerned about the ability of van lines to discuss rate matters with their own agents who also happen to have their own operating authority.

The lack of any clear direction on the future role of the ICC is of great concern to the industry. Given the yearly budget cuts of the Commission, its lack of effective enforcement capability, and its "hands off" approach to problems like volume discounting and operating authority issues many question the purpose of the ICC. If the ICC is "terminally ill" then a life-expectancy should be announced!

The industry is suffering from the government's confusion on this matter. The current market environment of the household goods industry is marked by uncertainty, economic fluctuations and severe price competition. Companies cannot realistically plan ahead. Consequently, it became imperative for NMSA to take the intiative and provide some guidance for its membership on how to deal with the transition to a possibly, totally deregulated environment. In June of this year NMSA's Executive Committee approved the formation of a blue-ribbon panel of industry leaders to study the impact of total deregulation on the moving and storage industry. The purpose of the "task force" is to develop programs, guidance and educational materials to assist the NMSA's membership and the industry in their transition to an environment in which they may be operating without federal regulation. After through analysis of the problems affecting this industry, the NMSA "Task Force on the Future" may have a legislative recommendation that would facilitate these changes.

The Task Force met initially in September, and is currently seeking input from the industry through a survey and will meet again to analyze this input and listen to member concerns on December 13. The "Task Force" is particularly interested in developing new education and training programs for the household goods industry and would benefit greatly from clear policy signals from the Congress about future regulatory actions. The nation's household goods industry is a unique industry, duly recognized with the Household Goods Transportation Act. Both consumers and the industry would benefit from a timely analysis and resolution of the various deregulatory/re-regulatory proposals both in the Congress and the Administration.

DOD MUST REDUCE REGULATIONS

The Household Goods Transportation Act is partly designed to reduce unnecessary paperwork in the daily administration of moving services. To their discredit,

Department of Defense agencies have not attempted to minimize the regulatory load placed on household goods movers, it has only increased the burden. Even worse, the Military Traffic Management Command (MTMC) is quickly filling in the voids where deregulation has occurred. Instead of accepting regulatory reform, MTMC finds it necessary to institute its own regulations and rate programs to supposedly maintain tight control over this industry.

A specific problem of excessive paperwork is the DPM (Direct Procurement Method) contract imposed by the United States Air Force. This pack-and-crate contractor program not only has voluminous requirements for carriers to follow, but a complicated quality control program which imposes dollar penalties. Our members, who contract with the Air Force, believe that if this quality assurance program is indiscriminately administered, enough penalties could be imposed on carriers to effectively drive down the price.

More recently, MTMC on short notice told the industry of its intent to implement a new Interstate Rate Solicitation program. Noting that motor carriers will probably lose single-line antitrust immunity for collective ratemaking activities next July, MTMC seized the opportunity to impose its own layer of new regulations. This is typical of MTMC's entire behavior pattern in this area.

The primary reason given for the rate solicitation program, according to MTMC, is the need to effectively control and manage interstate shipments of household goods by issuing its own rates. In effect, the military, which is the customer, is telling the industry what it will pay for services, before the extent of the services have been determined. The MTMC reserves the right to reject rates and ask for new ones at will. Such an approach smacks of price-fixing, which MTMC is supposedly opposed to.

In July, the Small Business Administration held hearings on the Paperwork Reduction Act. Jack Macy of Macy Movers, Inc., who is the Chairman of NMSA's Military Affairs Committee, testified at the hearing held in San Francisco on the tremendous paperwork problems associated with military contracting. It is a perfect illustration of the problems household goods carriers are facing with Department of Defense agencies. The transcript of Mr. Macy's testimony is attached with NMSA's statement for the Committee's careful review.

NMSA formally requests that this Committee launch a full-scale investigation by the General Accounting Office of the Military Traffic Management Command's overall activities in relation to household goods carriers, including the new Interstate Rate Acquisition Program.

ICC REVIEW OPERATIONAL RULES

Very recently, the ICC decided to undertake a complete review of the operational regulations governing the household goods industry (49 CFR 1056). Such an action is welcome, if the Commission's review is intended to further identify and reduce, to the maximum extent possible, the regulations currently imposed on the moving and storage industry.

RELATED ISSUES

Diesel differential

One such action is the heavy-vehicle users tax incorporated in Title V of the Surface Transportation Assistance Act of 1983 (STAA).

When the Highway Revenue Act (Title V) was still in its formative stages, NMSA endorsed the five cent per gallon fuel tax increase, but opposed the heavy vehicle use taxes as excessive and unfair. Although the taxation scheme was modified slightly, it will still have an adverse impact on many small movers.

The inequity of that method of taxation led NMSA to join the "Coalition for Fair Truck Taxation." The coalition is supporting H.R. 2124, a bill which establishes an additional five cent per gallon excise tax on diesel fuel used by trucks weighing over 10,000 pounds (gvw). This approach is more equitable and efficient than the original heavy-vehicle use tax. To date, there are 196 co-sponsors of H.R. 2124, the counterpart legislation in the Senate S. 1476 has 23 co-sponsors. NMSA urges Congress to repeal the heavy user tax provisions of the STAA and enact the fairest compromise—the "diesel differential."

Multiemployer pension plan problems

The withdrawal liability provisions of the Multi-Employer Pension Plan Amendments Act (Title IV of ERISA) remain one of the most difficult problems facing moviang and storage company employers. After the enactment of MEPPA, many of NMSA's members believed that their pension liability was limited to contractual ob-

ligations. But they soon found that under the new law they were also saddled with the unfunded vested liabilities of the multiemployer pension fund to which they contribute.

Our members have found that their flexibility in making fundamental business decisions have been significantly thwarted by the withdrawal liability provisions of MEPPA. Routine transactions such as sales, acquisitions, mergers, purchases, or business closings, can cause employers to suddenly be responsible for their pro rate share of the funded vested liability in their pension fund.

NMSA calls the Committee's attention to the pension plan problems because it represents a major stumbling block to a healthy competitive industry. NMSA recently surveys its members on this issue, the results confirmed the seriousness of the onerous liability problem. Our members are in strong support of a legislative remedy, as soon as possible.

Use of operating authority

Both the Household Goods Transportation Act (HGTA) and the Motor Carrier Act stress competition and reduced regulation as ways of achieving more effective motor carrier transportation services. As part of this effort, the agents' flexibility to utilize their own operating authority was greatly enhanced when the operational regulations governing the household goods industry were revised to conform to the HGTA.

Unfortunately, some agents who enthusiastically obtained their own ICC operating authority after the enactment of the Motor Carrier Act and the Household Goods Transportation, were subsequently unable to use the new operating rights because of overcapacity and restrictions imposed by their van lines. Some of the large national van lines are instituting policies requiring any carrier currently affiliated with it as an agent to either dedicate its own established name exclusively to the van line and abandon its own authority, terminate its affiliation, or establish a separate subsidiary to operate as an independent carrier.

A General Accounting Office Report to the Congress on the "Household Goods Moving Industry: Changes Since Passage of Regulatory Reform Legislation" published in June clearly outlined this problem. The GAO noted that, "In many ways, a van line places implied or expressly stated pressure on its agents to either limit or totally prevent the use of their own operating authority."

NMSA believes this adverse development is an unintended effect of the regulatory reform laws. Such restrictions by the van lines may not be illegal, but NMSA believes these actions are inconsistent with the goals and policies underlying the Household Goods Transportation Act. NMSA would appreciate the Committee's continued attention to this matter and clarification of Congress' intent.

Antitrust immunity for intrastate collective ratemaking

For many years states have permitted motor carrier rate bureaus to engage in collective ratemaking activities. However, in a number of recent cases, the courts and the Federal Trade Commission have ruled that rate bureaus are not exempt from the federal antitrust laws because their intrastate activities are not "compelled" by the state in which they operate. For example, in *United States* v. *Southern Motor Carriers Rate Conference* #79-3741 (Fifth Circuit, Unit b, 4-11-83) the Fifth Circuit held that the collective ratemaking activities of the Southern Motor Carrier Rate Conference, the Motor Carriers Traffic Association and the North Carolina Motor Carriers Association (representing common carriers in the states of Alabama, Georgia, Mississippi, North Carolina, and Tennessee) amounted to a per se violation of Section 1 of the Sherman Antitrust Act.

Additionally, the Antitrust Division of the Department of Justice is currently investigating the activities of traditionally-exempt rate bureaus throughout the U.S. In response to both the recent administrative and judicial decisions and the Department of Justice's increased activity in this area, a number of states have enacted legislation to protect the antitrust immunity of motor carrier rate bureaus in their respective states. On a national level, there is a bill, H.R. 3735, sponsored by Representative Sam B. Hall (D, TX), which exempts intrastate collective ratemaking activities from the federal antitrust laws. This legislation is pending before the House Subcommittee on Monopolies and Commercial Law.

The National Council of Moving Associations (NCMA), is a coalition of state associations representing the moving and storage industry. Since 1969 this NMSA affiliate has attempted to collectively represent the views of states before the federal government. The NCMA supports the efforts of Representative Hall and the state legislatures. Given the traditional tolerance of states for collective ratemaking activities, this new emphasis on antitrust scrutiny is misplaced. Forcing state motor carrier and moving associations to vindicate their rights in costly lawsuits, can only contribute to a worsened financial condition in the industry.

In behalf of NCMA, NMSA requests that this committee review Congressman Hall's bill (H.R. 3735) and individual members join in co-sponsoring the proposal and urge early Congressional hearings and action.

CONCLUSION

The Household Goods Transportation Act is a fair and well-balanced law. These annual oversight hearings, which probe into the real-world effectiveness of the legislation, provide an important opportunity for household goods carriers to give the Committee their candid appraisals of how the Act is being implemented.

NMSA requests the Committee's careful consideration of the concerns which have been highlighted. Some clear policy direction is needed from Congress on the future role of the Interstate Commerce Commission, as well as some clarification of the current regulatory confusion which exists throughout the federal agencies. Moreover, NMSA urges this Committee to initiate a thorough GAO investigation of the Military Traffic Management Command's overall practices and the new Interstate Rate Acquisition Program.

[The following information was subsequently received for the record:]

QUESTION OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question. In your testimony, you state that volume discounts are adversely affecting the financial well-being of the small mover and the owner-operator. In what specific ways is this happening?

Answer. One of the primary goals of the Household Goods Transportation Act of 1980 is to provide a safe, stable, and financially sound household goods moving industry. The National Moving and Storage Association contends that volume discounts permitted under the Motor Carrier Act of 1980 directly thwart the fulfillment of this legislative goal.

NMSA realize that volume discounts are designed to increase competition, however by allowing such discounts, or any blanket discounts, the door is opened to discriminatory and below-cost pricing which contributes to the potential bankruptcy of the small mover/agent and owner-operator who are unable to compete financially with larger national van lines.

By providing a guise for discriminatory and predatory ratesetting, volume discounts allow larger movers to consistently and effectively underprice small movers, since the larger carrier is financially stronger to absorb significant short-term loss in exchange for considerable long-term profit. Many examples have been cited by NMSA members that show small mover/agents losing countless moving jobs to larger carriers because they are offering discounts ranging from 10 to 40 percent off the tariff rate. The large national carriers have a major advantage over the small carriers in that they have significantly more opportunities for return loads, consequently they have greater pricing flexibility.

The small regional carriers are being priced out of the market. The small family-owned moving company concept of dependable, personalized service will diminish, if not disappear, if discounts are allowed to continue and quality service becomes secondary to the discounted price. If carried to an extreme, the ability of the large national carriers to offer volume discounts will inevitably foster the very evil increased competition is designed to eliminate: localized dominance of a market by larger companies.

Furthermore, it has long been recognized that corporations, large commercial enterprises (usually referred to as national accounts) and the military are consistent high volume users of household goods transportation services, and account for a significant portion of the industry's total revenues. Prior to the widespread use of volume discounts, both agents and the national van lines equitably shared the commercial benefits of providing transportation services to these shippers, and agents effectively fulfilled their role as the nucleus of industry operations. However, with the advent of volume discounts, the agent is placed at a serious and economically unhealthy disadvantage.

Volume discounts offered by the national van lines require shippers to solicit transportation services from the same carrier, in order to qualify for the discount. Consequently, large national accounts are forced to forgo direct negotiations with the agent (the traditional procedure) and instead, must contract directly with the van line principals. Quite clearly, the instrumental role of the agent as the operational arm of the industry is severely hampered in this case. Further, the ability and opportunity for agents to perform household goods transportation services

under their own operating authorities is seriously threatened. In light of the intent of the Household Goods Transportation Act to foster a financially stable and sound household goods moving industry such a result is hardly acceptable.

Question. Why does NMSA believe that antitrust immunity for intrastate collective ratemaking is so important?

Answer. First, federal antitrust immunity for discussions relating to rates, charges and allowances for transportation provided under the authority of the carriers is crucial to insuring that the industry maintains a high level of service to the public. In its formal report accompanying the Household Goods Transportation Act of 1980, Congress recognized that the continuation of the unique working relationship between agents and their van lines was integral to the financial and organizational health of the household goods moving and storage industry. Antitrust immunity has played a large role in allowing the agency system to function successfully for both the consumer and the industry.

The absence of immunity would have a negative impact on the small business segment of the moving and storage industry. If such immunity were eliminated, carriers could no longer discuss rates with their independent agents, several of whom may be located in the same city, and thus eliminate the economics of sharing traffic and sharing the overhead cost of advertising and general administration. The average agent would not be able to duplicate the various support functions a van line provides. Moreover, the small mover/agent, who probably has his own operating authority, is generally unsophisticated in his business practices—he simply does not know his costs. Consequently, he needs to be able to discuss both rate and service options with his respective van line.

Second, NMSA believes legislation is needed which specifically provides motor carriers of property with federal antitrust immunity for intrastate collective ratemaking. Such legislation would curb the zealous antitrust enforcement activities by the Department of Justice and the Federal Trade Commission, such as those brought against the Massachusetts Furniture and Piano Movers Association, the New England Motor Rate Bureau and the Southern Motor Carriers Rate Conference.

This is clearly a states rights issue. Whether collective ratemaking for state transportation rates should be expressly prohibited or compelled should be a matter of state law, not a policy set by federal enforcement actions. State business practices should be the domain of the state governments.

There have been cases (such as the Massachusetts Movers) in which carriers believed they were legally operating under their state law which authorized and supervised collective ratesetting. Although NMSA does not want to comment on the merits of that specific case, movers in any state should be able to depend on their state laws for guidance and not be continually exposed to federal agency enforcement actions.

Furthermore, intervention by the federal courts and the Department of Justice and Federal Trade Commission has exposed motor carriers of property to excessive monetary penalties (treble damages in the Massachusetts Movers case) when private litigation is initiated. This situation is unacceptable.

Consequently, NMSA urged the Senate Surface Transportation Subcommittee's support for legislation which provides this necessary immunity. There is a bill in the House of Representatives, H.R. 3735, sponsored by Congressman Sam B. Hall (D, TX), which exempts intrastate collective ratemaking activities from the federal antitrust laws. This legislation is pending before the House Subcommittee on Monopolies and Commercial Law.

NMSA welcomes the opportunity to elaborate on the issues of concern to its members and appreciates the subcommittee's sensitivity to the problems the household goods industry is experiencing.

Senator DANFORTH. Thank you.

General Small stated that he was new on the job but that he had instituted a practice of having meetings with the industry and being very open to communication with the industry. Have you found the Department of Defense to be open and available and willing to work on common problems and sensitive to your points with respect to paperwork and any other problems that you have with the Defense Department?

Mr. BAER. Mr. Chairman, we find it refreshing that these meetings have been initiated and we urge their continuation. However, we have not found them responsive in the past.

Senator DANFORTH. You have not what?

Mr. BAER. We have not found them responsive to us in the past.

Senator DANFORTH. And as I understand it, they seem to enjoy forms and paper and if you complain about it, that is just too bad, they are the big guy? As Matt Scocozza testified they are responsible for about a third of the moves, and that is just too bad?

Mr. BAER. Yes, Mr. Chairman. We think that figure is somewhere around 16 or 17 percent, but your remarks are correct. It is just too bad.

Senator DANFORTH. They just seem to be truculent and they do things their way and that is it.

What grade would you give the Household Goods Transportation Act, Mr. McShane, if you were grading it? Would it get an A or an F, or what?

Mr. MCSHANE. A C minus, I would say.

Senator DANFORTH. C minus?

Mr. MCSHANE. It has allowed for a certain amount of competition to come in. It has increased competition, which is good for everybody involved on both sides of the street, but the way the Commission has been fully interpreting the letter of the law has not exactly been, in our judgment, in relationship to how Congress decided it ought to be.

I think this needs to be looked at and addressed.

Senator DANFORTH. How has it departed from Congress?

Mr. MCSHANE. I think the entry levels of just about virtually anybody is one area. I think the area of binding estimates, when you see household moves going in some instances with 50 percent discounts is beyond compensatory levels and there is no control at all in that area.

I think contract carriage, where you have contract accounts going to substantial shippers at substantial discounts, whereas smaller shippers with less moves and less volume are receiving disproportionate revenue discounts. That is just certainly a few areas that come to mind quickly.

Mr. BAER. Mr. Chairman, may I tag on to that?

Senator DANFORTH. Yes; certainly.

Mr. BAER. I think we would give a little bit higher grade than that, probably a B. As you well know, it was compromise legislation going in, and we believe that the problem is not necessarily the legislation as much as it is the implementation and the management, and that would be where we would suggest there needs to be correction.

Senator DANFORTH. In what regard?

Mr. BAER. I think in terms of the ICC's interpretation. I think in terms of the DOD, as we have testified here this morning, we would just like to see a clearer direction coming from the ICC. We are all learning new rules. We learned, I think, very quickly, given the rapid change that occurred in our industry and I think we have adjusted fairly well.

There are still many problems facing us but they face everyone.

Senator DANFORTH. Could you be more specific in your comments about the ICC?

Mr. BAER. Well, I think in my own judgment that the ICC has not given us a very clear policy direction in the area of pricing, for one specific point. I think that we have gotten mixed signals. I think we have gotten contradictory signals.

And when you are involved in an industry such as ours where you have this three-tier relationship between a national van line and a network of independent agents and thousands of van operators, it becomes pretty difficult to function and to devise any pricing strategy or long-range planning for your company given the sudden jerks and turns that we have been exposed to over the last 3 years.

Senator DANFORTH. Do you believe that discriminatory and predatory pricing practices are common?

Mr. BAER. I think there is some of that going on; yes, sir. I think, however, that we are getting probably into an area that the Bureau is more prepared to respond to than am I. If you do not mind, we would leave that question, perhaps, to them.

Senator DANFORTH. Do you have a comment, Mr. McShane?

Mr. MCSHANE. No; I welcome the proceeding of the Commission on the paperwork aspect of things. That could certainly help a great deal and I would like to reemphasize that any help we can get in that area we will be very grateful.

Senator DANFORTH. I also gather you do not like the FTC much.

Mr. MCSHANE. No comment.

Senator DANFORTH. Thank you, gentlemen.

Mr. MCSHANE. Thank you.

Mr. BAER. Thank you.

Senator DANFORTH. Mr. Epstein and Mr. Smith.

Mr. Epstein.

STATEMENT OF SIDNEY EPSTEIN, PRESIDENT, ALLIED VAN LINES, INC., REPRESENTING THE HOUSEHOLD GOODS CARRIERS' BUREAU, INC.

Mr. EPSTEIN. Good morning, Mr. Chairman. Thank you very much for permitting us to make this statement.

My name is Sidney Epstein. I am president of Allied Van Lines, with headquarters in Broadview, Ill. The statement is submitted on behalf of the Household Goods Carriers' Bureau and its approximately 1,700 members.

The bureau is the principal ratemaking organization of the household goods carrier industry. This is the third time the bureau has appeared for oversight hearings that were intended to address the effects of the 1980 legislation and whether it is being implemented according to congressional intent.

In 1981 and 1982 we provided our view of the manner in which the ICC and the Department of Defense were implementing congressional intent. Those earlier reports will not be restated here other than to say that their principal thrust was that Congress appeared to know what it was doing when it enacted the 1980 legislation and the industry thought it understood what the Congress intended, but that the industry was having great difficulty reconcil-

ing clear legislative language with the numerous actions or inactions of the ICC that simply did not comport with the law that had been so recently enacted.

Unfortunately, this situation has not changed to one degree. In a nutshell, the ICC is completely embroiled in a program to deregulate all phases of the operations conducted by household goods carriers—entry, economic and general enforcement of the Interstate Commerce Act and the regulations promulgated thereunder.

The bureau supports the recent testimony of the American Trucking Associations before this committee, including the specific criticisms ATA has leveled at the Commission. We would simply add that from the standpoint of my industry it is clear that the ICC has made a mockery of the 1980 legislation.

If any question exists on this point, I refer you to the oversight testimony of the ICC Chairman presented to the Commerce Committee on September 21, 1983, in which he reported on developments under the Motor Carrier Act of 1980 and noted that the Commission was engaged in nothing more than a paper shuffling operation that he characterized as absolute nonsense.

It would be difficult to imagine a clearer admission of dereliction of duty or malfeasance in office. We urge this committee to attempt to reconcile the statement of the ICC Chairman with the legislative history underlying the 1980 act.

Notwithstanding clear legislative commands, my industry finds itself in an era of no Commission regulation of rates or charges, no enforcement of a ratemaking system or ratemaking standards, and pure and simple Commission indifference. According to the Commission, carrier rates can never be predatory, there is no such thing as an unjust or unreasonable rate or charge, and carrier rates can never be discriminatory in their treatment of shippers in like circumstances.

How does all of this square with the 1980 legislation? The answer is it does not and it cannot. If Congress is unwilling to do anything to reverse the present direction of the Commission, regulation of my industry will surely collapse.

Turning to the Department of Defense, during the 1982 oversight hearings the bureau reported that the DOD, through its Military Traffic Management Command, called MTMC, was engaged in a program that was designed to nullify the collective ratemaking engaged in by bureau carriers under congressionally established standards.

Unfortunately, this program has continued and in fact has become significantly more blatant. Just last month a new program was announced by MTMC to control rate levels carriers will offer for transportation of military traffic. At the heart of this program is a regulation that will forbid the filing of bureau tariffs.

Also, MTMC has indicated that it intends to empower itself to reject any rate proposed by an individual carrier "because of unreasonably high price or other reasons." Members of Congress were extremely helpful when DOD proposed a similar program for application on intrastate shipments. Those efforts resulted in a referral to the General Accounting Office with instructions to undertake a thorough analysis of the planned program.

A similar approach should be taken with this latest effort of DOD to become my industry's ratemaker. We urge this committee to intercede with the appropriate committees of Congress to require a thorough evaluation of the planned DOD program and its effects on Government and industry.

In conclusion, my complete statement to this committee provides a tip of the iceberg view of the actions and inactions of the ICC following enactment of the 1980 legislation. We would welcome the opportunity to provide additional detailed explanations on the manner in which we believe the Commission has abused its discretion and flaunted the will of Congress.

No questions should exist in the minds of the members of this committee as to how my industry specifically and the trucking industry generally view the Commission's administration of the 1980 legislation. The Commission's record is weighted in one direction—total deregulation of the trucking industry.

As for the attempts of the DOD to refuse acceptance of collectively established tariffs and established carrier rate levels, congressional intervention is essential to obtain a reasoned analysis of the DOD program before it is forced on my industry.

I would be glad to answer any questions you may have. Thank you, sir.

Senator DANFORTH. Thank you. Mr. Smith is not yet here. My understanding is he will be here shortly.

You do not find fault with the 1980 act; your problem is with the implementation of the act by the ICC; is that correct?

Mr. EPSTEIN. That is correct, sir.

Senator DANFORTH. And you do not propose any change in the legislation?

Mr. EPSTEIN. No, sir.

Senator DANFORTH. Do you think that predatory pricing and discriminatory pricing are prevalent?

Mr. EPSTEIN. Yes, I do.

Senator DANFORTH. Can you tell us how or give us examples or elaborate?

Mr. EPSTEIN. I believe it comes from several directions. On the one side, as it concerns the individual consumer who we loosely call the COD shipper, I believe that the binding instrument system which is operating now in the industry without any rules, regulations, or guidelines, has permitted discriminatory and predatory pricing depending upon the area of the country, the time of the year, or the demands of the shipments, and that pricing is being conducted at this point without any relationship to the established or published tariffs on file.

Senator DANFORTH. Why is that not good for the public?

Mr. EPSTEIN. Well, I think, Senator, if I may, that it may have some great short-term benefits, but in the long run as you look at the industry, notwithstanding the reported financial condition today, in the final analysis there must occur a shortage of service and an inadequacy of quality of that service.

Part of the beneficial indications financially of our industry today is due in large measure to the fact that people are not replacing equipment. We are not buying the trucks that are necessary to provide the service and we are fast getting to the point where our

equipment is not going to be suitable to maintain the level of service.

Additionally, our drivers are independent contractors who are leaving this industry in droves and are not being replaced. People just do not want to make the investment in that equipment for the kind of paltry return that is coming to them.

Senator DANFORTH. You just think the marketplace does not work?

Mr. EPSTEIN. I beg your pardon, sir?

Senator DANFORTH. Do you think the marketplace does not work?

Mr. EPSTEIN. I do not believe that the marketplace will work in the long term absent total regulation or any policing effort, yes, sir.

Senator DANFORTH. Why do you think antitrust immunity for collective ratemaking in household goods is important?

Mr. EPSTEIN. I am sorry; I did not hear the last word, sir.

Senator DANFORTH. You consider antitrust immunity to be very important for ratemaking.

Mr. EPSTEIN. Yes, sir.

Senator DANFORTH. Would you explain that?

Mr. EPSTEIN. I think that one has to look at the industry as a whole and recognizing the different sizes of the carriers who are involved in this entire question. I might very quickly say that for a company the size of Allied Van Lines, we are constructed or organized in such a way that we probably could get along individually without any antitrust immunity at all.

Our agents are not carriers. We would have the freedom to discuss almost any matter with them. We have the resources to establish our own tariffs, conduct our own cost studies, and do other things that are necessary.

However, when you go down to the smaller carriers, of which there are several thousand in this country, these folks are just not in a position to do that, and they require a bureau, an umbrella, if you will, of limited antitrust immunity where they can sit down and discuss their particular problems, have an agency that can put together the cost of operations so that they know exactly what they are doing.

Absent the limited antitrust immunity, those smaller carriers, I believe, will disappear.

Senator DANFORTH. OK. Do you have any other comments about what you have heard today?

Mr. EPSTEIN. Yes, sir. With all due attempts not to be facetious, I was absolutely amazed at the testimony of the Department of Defense witness concerning their efforts to reduce the paperwork. I think it is an interesting opinion or recognition that here we have the largest potential customer of our industry and yet the industry, the vendors for that customer, are antagonistic to him.

It seems to me that one cannot just dismiss that as being just a quirk of fate, that the industry is definitely suffering under the administrative burdens that are imposed by the Department of Defense and find it just intolerable.

I think I would add just a gratuitous comment that a company such as ours, which is not unique in this industry, absolutely

makes an attempt to keep its dealings with the government at the lowest possible level.

Senator DANFORTH. They think they are saving the taxpayer money.

Mr. EPSTEIN. I would have to question that very seriously. It seems to me that if the Department of Defense were to adopt the best commercial practices they might save a tremendous amount of money.

Senator DANFORTH. OK. Thank you very much, sir.

That concludes the hearing. Thank you very much.

Mr. EPSTEIN. Thank you, sir.

[The statement follows:]

STATEMENT OF SIDNEY EPSTEIN ON BEHALF OF HOUSEHOLD GOODS CARRIERS' BUREAU, INC.

My name is Sidney Epstein. I am the President of Allied Van Lines, Inc., with headquarters at Broadview, IL. This statement is submitted on behalf of the Household Goods Carriers' Bureau, Inc. (Bureau) and its approximately 1,700 member carriers in response to this Subcommittee's invitation to testify on government implementation of the Household Goods Transportation Act of 1980.

The Bureau is the principal ratemaking organization of the household goods carrier industry. It operates pursuant to a collective ratemaking agreement that has been filed with the Interstate Commerce Commission (ICC or Commission) under 49 U.S.C. § 10706. The Bureau's rates and charges apply throughout the United States and between points in the United States on the one hand, and, points in Canada and Mexico, on the other.

I have been in the moving industry my entire working life, more than 40 years. For a number of years I was a part of a family-operated moving concern that operated from Stamford, Connecticut. My family's business (Stamford Storage Company) operated prior to and after the introduction of motor carrier regulation in 1935. I am thoroughly familiar with the operations of small moving companies as well as large national van lines such as Allied. For 25 years I was employed by Neptune Worldwide Moving Inc., where I held a variety of positions from salesman to Vice President—Operations.

I have been very active in industry affairs throughout my business career. I currently serve on the Bureau's Board of Directors, and as Chairman of its Rates and Tariffs Committee. Additionally, I am a member of the Board of Directors of the American Movers Conference of American Trucking Associations, Inc.

The Household Goods Transportation Act of 1980 was a unique piece of legislation. By all accounts its Congressional draftors intended that household goods carriers would be subjected to a significant measure of special legislative treatment undoubtedly because of their uniqueness in the transportation industry. This situation arises no doubt as a result of the carriers' close contact with consumers and the strong dependence a mobile American society places on movers to facilitate an important part of our economic activity. There is, for example, no private motor carriage of personal effects traffic of the type generally seen in the American economy. Large corporations do not own or lease over-the-road truck equipment to move their employees' personal effects as they move the products they manufacture and distribute. It is therefore apparent that significant justification existed for separate consideration and treatment of household goods carriers during the 1980 legislative reform period. That air of concern and need for separate regulatory treatment, however, has not been translated into a regulatory system that will endure and in the process insure reasonably adequate service to the public at reasonable rates and charges.

This is the third time the Bureau has appeared at oversight hearings that were presumably intended to address the effects of the 1980 legislation and the manner in which it was being implemented according to Congressional intent. In 1981 and 1982 the Bureau provided its view of the effects of the 1980 legislation and specifically the manner in which the Interstate Commerce Commission and Department of Defense were construing and implementing Congressional intent. Those earlier reports will not be restated here other than to say that their principal thrust was that Congress appeared to know what it was doing when it enacted the household goods legislation; the industry thought it understood what Congress intended but that the industry was having great difficulty reconciling clear legislative language with the

numerous actions or inactions of the ICC that simply did not comport with the law that had been so recently enacted. Unfortunately this situation has not changed to one degree. In a nutshell, the ICC is completely embroiled in a program that is obviously intended to deregulate all phases of the operations conducted by household goods carriers—entry, economic and general enforcement of the Interstate Commerce Act and the regulations promulgated thereunder.

The Bureau is fully aware of the testimony presented to the Senate Commerce Committee on behalf of the American Trucking Associations, Inc., in which ATA recited, chapter and verse, the litany of ICC actions or inactions that were intended to dismantle the present system. The Bureau supports that testimony including the specific criticisms ATA has leveled at the Commission. We would simply add that, from the standpoint of my industry, it is clear that the ICC as it is constituted today has made a mockery of the 1980 legislation enacted by Congress. If any question exists on this point I refer this Committee to the oversight testimony of the Chairman of the ICC presented to the Commerce Committee on September 21, 1983, in which he reported on developments under the Motor Carrier Act of 1980 as he perceived them and made the following statement:

"But the fact of the matter is that right now any kind of a cost-benefit analysis, what we are doing and what it is costing the taxpayers for us to do it is absolutely ridiculous. We are engaged in the absolute sham of regulation for regulation's sake. It is nothing more than a monumental paper shuffling operation, and the sooner it ends, the better. There is no reasonable public benefit involved. It is absolute nonsense." [1]

It would be difficult to imagine a clearer admission of dereliction of duty or malfeasance in office.

We urge this Committee to attempt to reconcile the statement of the Chairman of the ICC with the legislative history and Congressional Report that accompanied S. 1798, the bill that became the Household Goods Transportation Act. In our view the following excerpts from the Report of the House Committee contained clear expressions of Congressional concern for the well-being of consumers in their dealings with household goods carriers. Just as importantly, it signaled a direction for Commission administration of the new Act.

"The fact that the household moving sector does business directly with individual shippers also sets it apart from the rest of the trucking industry. These shippers usually move only once or twice in their lives and, consequently, lack of thorough understanding of the industry and sufficient clout to negotiate with it. Their situation is made more vulnerable by the fact that the moves involve all of their personal possessions, which often are of a fragile nature." H. Rep. No. 96-1372, 96th Cong., 2nd Sess. 2, reprinted in [1980] U.S. Code Cong. & Ad. News 4271, 4272.

"In putting together this legislation, the Committee focused its attention on the individual shipper's special situation. . . ." Ibid., at 3; 4273.

"The reported bill makes changes in three general categories. It reduces unnecessary Government regulation; it establishes new remedies and protections for consumers; and it furnishes additional pricing options for the carriers and the consumers." Ibid., at 4; 4274.

". . . the Committee recognizes that many users of household goods carriers are ordinary consumers unfamiliar with how the industry works and without the economic leverage of commercial shippers. These persons tend to be more vulnerable than other shippers and, hence, in need of protections that are not necessary for other motor carrier shippers. Accordingly, this bill provides the Interstate Commerce Commission with special authority to protect these shippers." Ibid., at 5-6; 4275.

Against this background the industry finds itself in an era of no Commission regulation of rates or charges, no enforcement of a ratemaking system or ratemaking standards as envisioned by the 1980 legislation and pure and simple Commission indifference toward the legislation enacted by Congress. According to the Commission, household goods carrier rates can never be predatory, there is no such thing as an unjust or unreasonable rate or charge, and carrier rates can never be discriminatory in their treatment of shippers in like circumstances.[2] How does all of this square with the 1980 legislation? The answer is it does not and it cannot. If Congress is unwilling to do anything to reverse the present direction of the Commission, regulation of the household goods carrier industry will collapse.

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[1] Senate Oversight Hearings, Transcript pages 28-29.

[2] Ex Parte No. MC-166, "Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980," decided Sept. 13, 1983.

I will provide examples of Commission legislation by administrative fiat at a later point in this statement, but before I do, I believe it is appropriate that I refer to a statement made by the Chairman of the House Committee on Public Works & Transportation reflecting a degree of Congressional concern over the ICC's administration of the 1980 legislation:

"One of the things we have found and it has come from the general trucking industry also, is that there are bureaucrats, there are members of the ICC, who think that they want to do things exactly the way they feel like doing them irrespective of what the Congress said, and the President said when he signed that legislation. This we are not going to let happen." [3]

While statements of this sort tend to hold out a prospect of change at the ICC, they are clearly not enough. If Congress intends that there will be a household goods carrier industry operating in a manner consistent with the objectives of the 1980 legislation, the time to put the reins on the ICC is now and not later. If this testimony appears to contain a note of urgency, I fully intend it should. Let me make my point perfectly clear. The current situation has deteriorated to the critical stage and Congressional action is absolutely essential if the Commission's deregulation program is to stop.

For nearly 40 years the regulated moving industry has been under the impression that the ICC is an arm of Congress and that it receives its directives and, when appropriate, admonitions from Congress. Certainly this is not the case today, It is fair to say that the Commission takes its "marching orders" from the Administration. ICC administration of the Interstate Commerce Act is simply one facet of the overall deregulation movement that has been rampant during the past three years. The Administration has apparently directed the Commission to take no steps that would result in meaningful regulation of commerce in accord with existing law and also that any steps that are taken should be designed to dismantle rather than sustain the existing regulatory system. Once again, if Congress intends to do anything, the time has come for action.

It is now appropriate to point to specific illustrations of the manner in which the Commission has undertaken complete deregulation of my industry.

On October 6, 1983, the Commission issued a notice of proposed rulemaking announcing its intention to ". . . withdraw antitrust immunity for collective ratemaking activities by motor carriers of property with respect to shipments under 1,000 pounds." [4] This Commission proposal was fashioned in response to a petition filed on June 27, 1983, on behalf of two shipper groups. The Commission also goes well beyond the shippers' request and ask for comments on ". . . the question of whether antitrust immunity should be withdrawn altogether for motor carrier rate bureau activities." Viewed in light of the 1980 legislation, this is an astounding proposal.

We do not believe a serious question should exist concerning the Commission's statutory authority to adopt either of these proposals. Clearly, Congress has acted to permit motor common carriers of property to engage in collective ratemaking activities so long as bureaus function in accord with the requirements and restrictions set forth by Congress in Section 10706 of the Interstate Commerce Act, 49 U.S.C. § 10706. Collective ratemaking by groups of carriers pursuant to approved ratemaking agreements immunizes those carriers from prosecution under the antitrust laws. The Commission however views the matter differently because it sees an opportunity in the shippers' proposal to further disrupt and dismantle the existing carrier ratemaking system. This is a perfect example of the Commission's willingness to seize upon a opportunity to drive towards complete deregulation of the household goods carrier industry.

On the other side of this same coin, in October of 1980 and again May of 1981, the Bureau filed amendments to its collective ratemaking agreement to conform to the requirements of the 1980 legislation and on December 15, 1981, and January 6, 1982, the Bureau filed petitions for declaratory orders [5] urging Commission resolution of important ratemaking questions involving the 1980 legislation and how it was to be construed by carriers in the formulation of just and reasonable rates and charges.

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[3] Speech of Rep. James J. Howard, before the American Movers Conference, Lake Tahoe, Nev., Oct. 3, 1983.

[4] Ex Parte No. MC-172, "Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments."

[5] Docket No. 38757, "Household Goods Carriers' Bureau Petition for Declaratory Order" and Docket No. 38769, "Household Goods Carriers' Bureau, Inc.—Petition for Declaratory Order—Lawfulness of Contract Carrier Rates." In Docket No. 38769 the Bureau also filed two supplemental petitions urging Commission action with no success.

The Commission has yet to act on the ratemaking agreements and it never responded to the Bureau's petitions. Last year at the oversight hearings held before this Committee the Chairman of the Commission, in response to questions involving those requests for Commission guidance, indicated that the Commission intended to address the issues posed in a recently instituted proceeding.[6] Of course, as I have noted, the Commission decision in that proceeding indicates that all is well in the carrier ratemaking area. It sweeps under the proverbial rug all questions concerning rate reasonableness, predation or discrimination. quite obviously, the Commission has no intention of addressing any question that might provide guidance to the industry in its ratemaking activities or establish standards for reasonable carrier ratemaking. But the Commission is perfectly willing to expeditiously consider a shipper request that antitrust immunity for collective ratemaking for shipments weighing less than 1,000 pounds shoulc be withdrawan or, even more drastically, that all motor carrier antitrust collective ratemaking immunity should be withdrawn.[7] The tactics employed by the Commission are so obvious that they must be construed as a clear rebuff of Congress' will as expressed in the 1980 legislation.

It is also appropriate to make another important point concerning the Commission's Ex Parte MC-172 proposal. The principal thrust of the shippers' petition prompting this proceeding is the allegation that rates applicable to shipments weighing less than 1,000 pounds have increased more rapidly than have rates applicable to shipments in higher weight categories. Assuming this is the case, the question arises as to why this as occurred. The answer lies in the Commission's unwillingness to suspend, investigate or modify proposed rate increases and in the process administer standards of ratemaking reasonableness. The shippers' petition is therefore an act of frustration directed not at the carriers' ratemaking practices but at the Commission.

In the case of household goods carriers, the average personal effects shipment they transport weights approxmiately 5,700 pounds, Thus, any proposal to terminate the carriers' collective ratemaking activities for shipments weighing less than 1,000 pounds would so drastically disrupt the entire col; ctive ratemaking process as to make it a nullity. We submit that the Commission would be quite pleased to see that result. Also, the fact that personal effects shipments are concentrated in a narrow range of weight brackets, general increases are not proposed by weight categories and all percentage increases have general application across the board for all shipment weights. The Commission's notice of proposed rulemaking deliberately makes no distinction between freight and household goods carriers and is obviously designed to disrupt the entire collective ratemaking system whether freight or household goods.

I will now turn to another important illustration of Commission disregard for the will of Congress as contained in the 1980 legislation.

For the third consecutive year the Bureau is compelled to bring to your attention the Commission's failure to follow a specific Congressional directive. Section 4 of the Household Goods Act, 49 U.S.C. § 10734, requires that any carrier who offers binding estimates must conform to the tariff filing requirements imposed by Section 10762 of the Act. Also, the Act directs that binding estimates ". . . must be available on a nonpreferential basis to shippers and must not result in charges to shippers which are predatory." It seemed clear to my industry that Congress intended that some system of monitoring binding estimates would evolve as a result of the 1980 legislation and that the Commission would be in the forefront of enforcement of reasonable standards related to the binding estimate process. To date, absolutely nothing has occurred. Yet it is common knowledge in my industry that a myriad of binding estimate practices have evolved under the new legislation. The legislative history underlying Section 4 of the Household Goods Act clearly indicates that consumer shippers were anxious to have available a means by which they could determine transportation charges at the time of shipment. In this way they could avoid controversies with carriers resulting from higher charges developed through the application of actual shipment weights and tariff charges. Price certainty, however, has given way to a binding estimate system that has absolutely no rhyme or reason. Some carriers quote binding estimates on flat charges without regard to shipment weight, distance or tariff charges. Others attempt to estimate shipment weight and apply an arbitrary rate per hundredweight tied to that weight irrespective of their published tariff rate. Other carriers disregard the normal factors considered when

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[6] Ex Parte No. MC-166, supra.

[7] In its notice in Ex Parte No. MC-172, the Commission provides further evidence of its willingness to rush towards a deregulatory result by announcing that it intends to issue a final decision within 60 days of its receipt of comments.

estimating and attempt to determine what another carrier may have quoted as a guaranteed price or binding estimate and undercut those charges. Many carriers also guarantee a given rate per hundredweight and/or a percentage discount that may or may not be published in their tariffs and base total transportation charges on actual weight.

A reading of Section 4 of the 1980 Act, 49 U.S.C. § 10734, reveals that Congress did not intend a binding estimate system through which carriers would simply exact whatever charge they felt was appropriate in light of the particular consumer's transportation needs. The statute, for example, requires that carriers avoid preferential treatment of shippers. Certainly this result is also consistent with another important provision resulting from the 1980 legislation, the prohibition against so-called "weight bumping." Section 11917 of the Act, 49 U.S.C. § 11917, defines weight bumping as the "knowing and willful making or securing of a fradulent weight on a shipment of household goods." Of course we are not suggesting that carriers are willingly engaged in unlawful weight bumping practices with all of the attendant ramifications of criminal intent envisioned by Section 11917. We are suggesting, however, that the complete absence of Commission guidance in the area of binding estimates and guaranteed prices has caused a high degree of uncertainty among carriers and consumers as to how guaranteed charges are arrived at and whether in fact the shipper might have been better off simply allowing lawful tariff rates and charges determined by actual shipment weight to apply. Obviously Congress intended a reasonable approach to the offering of binding estimates and guaranteed prices that could admittedly take many forms. The Commission, however, has never interpreted the statute, has never attempted to set down what it believes Congress intended and, of course, in our view, has once again shirked its responsibility to consumer shippers.

During the 1982 oversight hearings the Bureau reported that the Department of Defense through its Military Traffic Management Command (MTMC) was engaged in a program that is designed to nullify the collective ratemaking engaged in by Bureau carriers under Congressionally established standards. Unfortunately this program has continued and, in fact, has become significantly more blatant.

In August of this year MTMC rejected a general increase in the basic transportation rate level maintained by Bureau carriers for the transportation of DOD traffic. That action forced the Bureau to seek relief in the United States Claims Court [8] leading to a Court induced acceptance by MTMC of the Bureau's general increase. That result however did not mark the end of MTMC's attempt to dictate carrier rate levels.

On September 27, 1983, MTMC announced a new program through which it intends to control the rate levels carriers offer for the transportation of military traffic. At the heart of this new program is a regulation that will forbid the filing with MTMC of collectively formulated Bureau tariffs. Also, MTMC has indicated that it intends to empower itself to reject any rate proposed by an individual carrier "because of unreasonably high price or other reasons."

It should be apparent that my industry's continuing dispute with DOD is far from over notwithstanding a Congressionally authorized procedure for the collective formulation and filing of tariffs with agencies of the United States Government. That authorization, of course, stems from Section 10721(b)(2) of the Interstate Commerce Act, 49 U.S.C. § 10721(b)(2), the mechanism employed by Bureau carriers to conduct a substantial part of their business with the government over the past twenty years.

The fact that my industry must continually combat efforts of this nature is in itself unfortunate and wasteful of carrier and government resources. Also unfortunate, however, is an apparent lack of candor in the military's dealings with industry. For example, a conference was held in Washington, D.C. on October 7, 1983, by selected members of the staff of MTMC to explain the DOD program to industry. It was held in spite of pleas from industry to hold a conference at a date when more industry representatives could be available and more time would permit a thorough analysis of the planned program. MTMC refused those requests and proceeded with its explanation of the new program. Part of that explanation included MTMC statements to the effect that motor carrier collective ratemaking antitrust imunity will expire with July 1, 1984, thus necessitating the planned program. When pressed to provide specifics underlying the legal conclusion that collective ratemaking authority will expire in 1984. The MTMC staff agreed that such an explanation would be provided to industry. The MTMC staff subsequently denied that this important subject was a part of their briefing given to industry and, having assumed that position, refused to provide any explanation supporting the legal rationale underlying its de-

[8] No. 540–83 C, *Household Goods Carriers' Bureau, Inc.* v. *The United States.*

cision to foreclose collectively formulated tariffs. So once again industry must challenge the Department of Defense to maintain a posture it believes is fully in accord with applicable law. Section 10706(b) of the Interstate Commerce Act, 49 U.S.C. § 1076(b), authorizes motor carriers subsequent to July 1, 1984, to formulate, discuss and vote upon general increases or decreases applicable to single or joint-line rates. This is precisely what Bureau carriers have done for more than 20 years in their formulation of tariffs for the transportation of United States Government traffic.

In this same connection, it should not go unnoticed that the Inland Traffic Directorate (general freight branch) of the Military Traffic Management Command apparently disagrees with the Personal Property Directorate. The general freight group now accepts and plans to continue to accept subsequent to July 1, 1984, Bureau formulated tariffs for the transportation of DOD freight traffic. The same is true of the important nonmilitary procurer of services for the federal government, the General Services Administration. These inconsistencies notwithstanding, the MTMC personal property branch appears fully intent upon adoption of its program foreclosing the filing of Bureau tariffs and, of course, industry must prepare itself to challenge these efforts just as it did recently in the Claims Court.

Members of Congress were extemely helpful last year when DOD proposed a similar program for application on intrastate shipments of personal effects traffic. Those efforts resulted in a referral to the General Accounting Office with instructions to undertake a thorough analysis of the planned program. A similar approach should be taken with this latest effort of DOD to halt collective ratemaking. The present system has been utilized for 20 years and it should not be disrupted on the strength of erroneous legal conclusions. We urge this Committee to intercede with the appropriate committees of Congress to require a thorough evaluation of the planned DOD program and its effects on government and industry.

CONCLUSION

This statement provides a "tip of the iceberg" view of the actions and inactions of the Interstate Commerce Commission following enactment of the Household Goods Transportation Act of 1980. My industry would welcome the opportunity to provide additional detailed explanations of the manner in which we believe the Commission has abused its discretion and flaunted the will of Congress. No question should exist in the minds of the members of this Committee as to how the household goods carrier industry specifically and the trucking industry generally views the Commission's administration of the 1980 legislation. The Commission's record is weighted in one direction—total deregulation of the trucking industry. Congress must involve itself in what the Commission is doing if the 1980 legislation is to survive in a meaningful way.

As for the attempts of the Department of Defense to refuse acceptance of collectively established tariffs, Congressional intervention is essential to obtain a reasoned analysis of the DOD program before it is forced on my industry.

[The following information was subsequently received for the record:]

QUESTION OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question. Are there any types of collective ratemaking immunity that, in your view, could be removed without hampering the operations of the household goods moving industry?

Answer. No. To understand the importance of collective ratemaking antitrust immunity to the household goods carrier industry one must also understand the structure of the industry and the interdependence and cooperation that exists between van lines and carrier agents.

In the case of the Household Goods Carriers' Bureau and its approximately 1,700 member carriers, nearly 1,400 of this number are Class III carriers who earn revenues of less than 1 million dollars annually.[1] These small carriers may or may not be agents of larger van lines transporting shipments under van line authority and also under authority issued to them by the ICC. Most importantly, these small carriers comprise the network of carriers and agents who are the nucleus of the household goods carrier industry. They are, in fact, the principal contacts consumers have with movers. They provide the myriad of services essential to the safe and efficient transportation of personal effects traffic including estimating charges for transpor-

[1] Nearly 200 Bureau carriers earn revenues of from $1 to $5 million annually.

tation, packing and unpacking, and providing storage at origins and destinations in the warehouses they own and operate. In addition, they routinely perform a number of other services related to the transportation of household goods traffic such as extra labor service, appliance service, elevator and stair service, piano moving, and the transportation of bulky articles such as boats, automobiles, etc. Incident free household goods transportation requires the orderly performance of each of these services. In addition, the assessment of reasonable rates and charges by van lines and carrier agents who may or may not be members of the same van line system requires the ability to discuss and decide upon the rates and charges that will be assessed for services of this nature when performed many hundreds or thousands of miles from shipment origins. Centering on one essential assessorial service that is routinely required by 26 percent of all personal effects shipments transported, distinct storage-in-transit charges apply in each of 3,100 counties located throughout the United States. These charges are known to all van lines and agents and are explained to consumer shippers at the time of shipment to avoid controversy when a shipment arrives at its destination and must be placed in storage. The present basis of assessing these charges evolved from an ICC proceeding in which the Commission prescribed such charges. A carrier agent in Bangor, Maine, who books a shipment for transportation to Galveston, Texas, and arranges for the transportation of that shipment under his affiliated van line's authority could well encounter a lack of storage facilities available through his van line at Galveston that would require the utilization of a competitive carrier's storage facilities to store the shipment he originated. This same situation arises in connection with any number of other services that are routinely performed by carrier/agents at origins and destinations. The interdependence and need to cooperate in establishing reasonable charges for these services is accomplished through the existing immunized collective ratemaking process. No segment of the collective ratemaking engaged in by household goods carriers could be removed without seriously impeding the physical operations we have described. More importantly, the price certainty and reasonable rate mandates envisioned by the 1980 legislation would be lost by consumers.

Question. During your testimony, you noted your belief that discriminatory and predatory pricing practices were prevalent. Please provide specific examples of such practices.

Answer. The Bureau's statement to the Subcommittee does not complain about the existence of carrier predatory pricing practices. Rather, it complains that the Commission in Ex Parte MC-166 concluded that household goods carrier rates can never be predatory, unjust or unreasonable and that carrier rates can never be discriminatory in their treatment of shippers in like circumstances. (Bureau Statement, p. 6). The Bureau's complaint was directed to the Commission's apparent unwillingness to deal with ratemaking issues notwithstanding the clear mandates of the Interstate Commerce Act.

As for discriminatory pricing practices, it is clear that household goods carriers have, since the 1980 legislation, developed pricing strategies without Commission interference. Whatever the pricing strategy, preferential contract carrier rates for national account shippers or volume discounts of whatever magnitude for brokers or relocation services, the Commission has elected to simply ignore the pricing strategies carriers elect to pursue. This situation exists notwithstanding the requirement contained in 49 U.S.C. § 10741(a) that common carriers not discriminate among shippers. A common carrier may not charge or receive from a person a different compensation by using a special rate, rebate, drawback, or other means for a service rendered, or to be rendered in transportation the carrier may perform than it charges or receives from another in performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances. A common carrier that charges or receives such a different compensation for that service unreasonably discriminates. Discount rates published to apply only for the account of a specifically named shipper or receiver appear to be prima facie unlawful under Section 10741(a) because they are unreasonably discriminatory against all other similarly situated shippers. See *Harvest House Marketing Corp.* v. *Green Bay & W.*, 358 I.C.C. 531 (1978). In the case of household goods carriers, a great variety of special rates and discouts exist particularly for the benefit of national account shippers while consumers who lack the same economic clout pay significantly higher charges for exactly the same service. The Bureau argued to the Commission in a petition for declaratory order (Docket 38769, Household Goods Carriers' Bureau—Petition for Declaratory Order—Lawfulness of Contract Carriage Rates), that Commission guidance in the form of reasonable standards were necessary to avoid placing consumers at an economic disadvantage while causing carriers to violate Section 10741 of the Act. The Commission did nothing in response to the

Bureau's request and, as the Bureau's statement to the Subcommittee indicates, it simply pushed aside any notion of discriminatory ratemaking practices in its decision in Ex Parte No. MC-166.

The Bureau's statement to the Subcommittee also notes the existence of carrier binding estimating practices that simply defy logic. Section 4 of the Household Goods Transportation Act authorized carriers to establish rates based upon written binding estimates of charges. Significant controversy has existed concerning what Congress intended when it said carriers may establish such rates "* * * subject to the provisions of this chapter [Chapter 105] (including the general tariff requirements of Section 10762 of this title)." The Commission has been absolutely silent through this period of confusion and indecision and, as a result, carrier binding estimates are as varied as they are numerous. Some are simply flat charges that are unrelated to shipment weight or distance. Others guarantee percentage discounts based upon either fictitious or actual shipment weights while still others are based upon fixed tariff rates reduced or not reduced by flat percentages at estimated or actual shipment weights. Two consumers moving essentially the same household goods effects from the same city to the same destination will pay charges that greatly differ because of these practices notwithstanding the clear nondiscriminatory prohibitions contained in Section 10741 of the Interstate Commerce Act. The Commission's answer to this has been nothing short of indifference.

Question. You stated in your testimony that the average personal effects shipment transported by household goods carriers weighs approximately 5,700 pounds. Why, therefore, do you believe that the ICC's proposal to terminate the carriers' collective ratemaking activities for shipments weighing less than 1,000 pounds would drastically disrupt the entire collectively ratemaking process? Would this necessarily be undesirable from the consumer's standpoint?

Answer. The answer to this question relates to the answer provided to question 1. In calendar year 1982, 96.7 percent of all household goods personal effects shipments transported required one or more accessorial services at shipment origin and/or destination. These services were required by shippers notwithstanding shipment weight. The fact that a shipment weighs 1,000 pounds or less has no bearing on the fact that stair or elevator service, storage-in-transit, packing or unpacking or any other accessorial service was required. Thus, elimination of antitrust immunity on rates and charges for shipments weighing less than 1,000 pounds would eliminate the carrier's ability to establish and maintain the nationwide system of rates and charges that underpins the coordinated, interdependent moving system that now exists between van lines and carrier/agents. From the consumer's standpoint, such a situation would eliminate reasonable rates and charges particularly at shipment distinations and in their place create individually fixed rates and charges that, according to the ICC's existing ratemaking system, could be increased on five days' notice to the public. Thus, a personal effects shipment could be in transit when such rate change is effected and the destination accessorial service performed by a destination carrier/agent could significantly differ from that quoted at the time of shipment. Circumstances of this sort are not at all difficult to envision during a peak moving season, the months of June through September, when roughly 45 percent of all personal effects traffic is transported. Certainly pricing practices of this nature do not serve the consumer's best interest.

[Whereupon, at 10:34 a.m., the subcommittee adjourned, to reconvene upon the call of the Chair.]

[The following information was subsequently received for the record:]

STATEMENT OF THE MAYFLOWER WAREHOUSEMEN'S ASSOCIATION

My name is Donald B. Hamilton, 1983 Chairman of the Mayflower Warehousemen's Association. I am also the owner of two local moving companies located in Huntington Station and Medford, New York, both of which are agents for the Aero Mayflower Transit Company.

The Mayflower Warehousemen's Association (hereinafter referred to as "MWA") is an Indiana Not-for-Profit Corporation originally chartered by the State of Indiana on February 6, 1935. Its principal and only office is located at 9247 North Meridian Street, Suite 120, Indianapolis, Indiana 46260. Membership in MWA consists exclusively of the agents of the Aero Mayflower Transit Company, Inc. (hereinafter referred to as "Transit Company"). MWA is a voluntary association, i.e. all agents electing to become a member in MWA do so on a voluntary basis. Termination of

membership in MWA is also by voluntary action on the part of the individual member, or only for cause by MWA.

It is important to the submission herein that this Subcommittee know the general overall background and facts of the member-agents who compose this association: (a) Each member-agent is an independent businessman, acting as an agent for the Transit Company; (b) In 1982, the member-agents generated "dollar volume" in sales in excess of $200,000,000 (Two hundred million dollars); (c) Member-agents are small businesses, mostly family owned, who represent the Transit Company in every state of the United States and in foreign countries, and in every major metropolitan city of the United States; (d) Member-agents own most of the equipment and provide a majority of the labor necessary to serve the shipping public; (e) Member-agents must depend upon their "moving business" and its corresponding regulations for their livelihood and their destiny.

Therefore, our member-agents do have a great interest in, and concern with, the Interstate Commerce Commission's (hereinafter referred to as "Commission" or "ICC") implementation of the Household Goods Transportation Act of 1980 and these Congressional Oversight Hearings.

The purposes and objectives of MWA as set forth in part of its Bylaws include:

"To act, suggest, and assist on behalf of its members concerning . . . rules and regulations . . . before State and Federal agencies; that will be in the best interest of the agent-member, and the industry as a whole. . . ."

Therefore, MWA has the Corporate authority to submit this written Statement on behalf of its members.

A number of MWA's members have a "dual" interest in these Oversight Hearings before this Subcommittee and the final Rules adopted by the Commission in that (a) they are providing interstate hauling for the Transit Company and (b) many have ICC authority in their own name and stead.

The Rules adopted by the Commission "greatly affect" each and every agent-member of MWA. They are the individuals and companies who "actually perform" a great deal of the moving services rendered to the public and are therefore, seriously affected by the outcome of these Rules and the implementation of the Act.

Additionally, the member-agents can be and are assessed for fines and penalties resulting from non-compliance with technical violations of the Rules of the Commission. Therefore, it is vitally important this Subcommittee recognize and understand the final Rules adopted by the Interstate Commerce Commission must also be reasonable and applicable to the agent.

When the Household Goods Transportation Act was passed in 1980, Congress recognized the distinct structure within the household goods moving and storage industry. It was acknowledged in this Act that our industry was comprised of three integral components; (1) Van lines; (2) Agents who may or may not be carriers; and (3) Owner-operators who are in the service of agents or van lines.

For three years now, MWA has presented both oral and written testimony at all Senate and House Oversight Hearings. We have repeatedly remined this committee of the integral relationship and dependency each of these three components have developed for one another through fifty years of regulation. MWA believes there has been little regard for the comments and forewarnings previously made before this Committee relating to the financial solvency of agents and owner-operators.

This committee has been charged with the responsibility of overseeing the Interstate Commerce Commission's administration of this Act. It is very apparent to MWA that this Committee and the ICC have little concern towards the agency systems and the owner-operators and continue to believe our industry is made up solely of carriers. This is emphatically wrong, as the agent and owner-operator components are just as vital and necessary as the carrier is to our industry.

Without a doubt, the number one problem facing agents and owner-operators todays is volume discounting. Since 1980, large volume shippers have been able to demand and extract considerable rate concession from the industry.

MWA would like to point out to this committee that volume discounting is more critical to an agent or owner-operator than to its van line. Van lines are generally more concerned with overhead expenses whereas the profits and losses of agents and owner-operators are more closely tied to operating costs. Most van lines can continue to cover their overhead expenses by offsetting reduced rates with increased volume. However, agents and owner-operators who have a tremendous investment in equipment and labor, will continue to incur the same operating expenses for any given shipment regardless of whether or not it moves at regular or volume discounted rates. With so many fixed operating costs, these small businessmen cannot continue to discount shipments by twenty percent or more, when there is not twenty percent profit available.

MWA believes that volume discounted rates are not only discriminatory to the individual shipper, but are quite often agreed to between the van line and the national account with the agent and/or owner-operator having no say or control over the final discount. As an example, a van line or one of its agents may offer a discount to a large shipper based in the Chicago area. Should an employee of this national account be transfered from Waterloo, Iowa to Clearwater, Florida, then all agents and owner-operators participating in that shipment would be required to serve that shipper at those reduced rates. So many times this creates undue problems, not only from a bookkeeping standpoint but also on the bottom line as far as profit is concerned. This continued practice may offer "short-sighted" bargains to national accounts but it will most certainly lead to a long term destructive impact on the agency system and the owner-operators.

Over the last three years, MWA has seen and heard testimonies for the ICC indicating the majority of carriers have increased profits. MWA disagree with this assessment, because upon examination of the operating ratios for the top 15 household goods carriers, as reported by the Household Goods Carriers Bureau, it clearly indicates the average operating ratios for 1980, 1981 and 1982 were 97.7 percent 97.5 percent and 97.4 percent respectively. Furthermore, these figures do not reflect or have any bearing on the operating ratios or financial solvency of the agents or owner-operators.

The consumer groups have also praised the Act and continue to press Congress and the Administration for futher deregulation of the entire motor carrier industry. They have noted in their past testimonies the number of complaints had decreased considerably and that the industry had substantially improved its on-time pickup and delivery of shipments. MWA agrees the statistics of the industry's timeliness have improved. However, the main reason is because of the over-capacity of equipment coupled with the decrease in available tonnage. The number of complaints have reduced not as a result of deregulation, but because of the national economic climate.

This Committee and the Congress have been alerted every year by a variety of industry groups of the potential effects deregulation could have upon small communties. It is still our belief that this is just the tip of the iceberg, and will lead to many of the problems confronting the airlines industry today. Drawing an analogy to the household goods moving and storage industry, van line will continue to maintain their market share over the heavy tonnage routes. The long term effect for the off-line points will be a deterioration of service and eventual disappearance of agents in those towns and communities.

MWA also projects there will evolve a number of van lines who will operate over these major transcontinental routes resulting in an environmental impact that will threaten the survival of many communities across this Nation.

MWA has consistently pointed out these concerns in all previous pleadings and testimony, without response, confirmation or recognition of the problems confronting the agents and owner-operators in our industry. It is time this committee sees fit to examine the financial hardships being borne by the small businessman/agents and the owner-operators.

All MWA members are small, independent businessmen/agents who take pride in being one of the three integal components of this Nation's household goods moving and storage industry. We urgently request this committee begin and immediate investigation of the irreparable effects deregulation and volume discounts are now having on the agents and owner-operators in our industry. We are vitally concerned with the issues addressed herein, and request this committee take immediate steps to investigate our sincere concerns without further delay.

Statement of Fred Lee Smith, Jr., Director of Governmental Affairs on Behalf of the Council for a Competitive Economy

I. INTRODUCTION

Mr. Chairman and members of the Committee, I appreciate the opportunity to provide my comments on the Household Goods Transportation Act on behalf of the Council for a Competitive Economy. The Council is a national membership organization of businesses and individuals organized to promote competition. We have long supported the deregulation objectives that prompted these oversight hearings.

These hearings are held to review the progress of transportation deregulation—specifically relating to household goods movers—and to determine what further deregulation might be appropriate. Such a mid-course reassessment is useful in particular as a way of gaining some information on the advisability of proceeding with

the various deregulation proposals now being considered. As this Committee is aware, antitrust considerations have become a critical factor in this debate. Past legislation has tended to recognize the value of antitrust immunity for the household goods sector; however that policy is now being questioned. Moreover, the antitrust division at Justice has been agressive at challenging a number of current industry practices. For these reasons and since in my opinion antitrust has received somewhat less attention, I will emphasize antitrust questions in my comments.

II. OVERVIEW

The Household Goods Transportation Act dealt with two areas of government interference in the transportation industry: restrictions on entry and pricing and the application of the antitrust regulations. That Act reduced anti-competitive restraints on entry and pricing considerably; but the ICC retains considerable discretionary power. That residual power makes it possible for the courts or some future ICC to reregulate the industry. Thus, it is important to complete the task of deregulation. Individuals and firms wishing to offer transportation services of whatever sort, at whatever terms should have the freedom to do so. Consumers in the marketplace, not regulators here in Washington, should determine whether these new offerings succeed or fail. Since our views here are similar to those of other pro-deregulation groups, we only briefly comment on this aspect in the body of this statement.

The Council differs from most groups favoring deregulation in the area of antitrust. We believe that those favoring trucking deregulation have taken the wrong road in advocating the extension of the antitrust laws to the trucking industry. I recognize that this position places the Council in opposition to most pro-market organizations. Moreover, it seems to place us on the side of the trucking industry and their labor allies who have argued for the retention of all ICC protective powers. In fact, we are arguing a rather different case. We argue that the antitrust laws create serious anticompetitive effects similar to those resulting from entry and pricing restrictions, and that neither antitrust nor ICC type economic regulations are desirable.

Below, I provide a brief overview of the intellectual case for allowing the market rather than the antitrust laws to determine the structure and organization of the trucking industry. I hope my testimony will encourage the members of this Committee to further consider the question. However, there are political as well as economic reasons to consider the antitrust exemption question. Flexibility on the antitrust issue might resolve the political problems that have so far blocked progress on trucking deregulation. Senator Packwood has already suggested—and the trucking industry has rejected—a package under which the antitrust laws would be held in abeyance for a set period in exchange for endorsement by the trucking industry of complete elimination of all ICC controls. That suggestion is a step in the right direction, and trucking firms might yet elect to accept such a compromise. Moreover, the American Movers' Conference has taken a more straightforward approach arguing for full deregulation—the elimination of ICC restrictions and the continuation of freedom from antitrust regulations. These positions suggest that legislation along the lines indicated is feasible.

This testimony first provides a brief statement endorsing the elimination of the ICC followed by a longer discussion of the case against antitrust regulations. I review the problems resulting from the Department of Justice and private antitrust actions and then list a number of gains made possible under current industry arrangements. Finally, I suggest a policy of per se legality for horizontal arrangements in the trucking industry.

III. ECONOMIC DEREGULATION SHOULD CONTINUE

The household goods sector along with other sectors of the transportation industry has gained great freedom in areas such as pricing and entry. This greater freedom has had its anticipated effect of increasing discounting and improving service quality. Consumer complaints have dropped as carriers have increasingly realized that they must meet a market—not ICC—fitness test. Moreover, consumers are being offered a greater number of service options including fixed price contracts and guaranteed delivery dates. Which price-service quality options will survive is unclear, but the carriers now have every incentive to be creative in the public interest.

The current ICC has "failed" the industry only in that it has refused to yield to its requests for anticompetitive rulings that would limit price competition and restrict entry. It has minimized the barriers to competition within the restraints now imposed by the law and deserves general commendation.

Still, the ICC retains the implicit power to restrict competition. This is unnecessary and creates a risk that some future commission might reregulate the industry. Thus, we urge the elimination of all ICC powers over the household goods sector. The ICC will soon have its 100th birthday; it is time for its retirement. The market remains a better guarantor of consumer interests and economic freedoms than even the most benevolent ICC.

IV. THE CASE FOR PRESERVING ANTITRUST "IMMUNITY"

It may appear strange for the Council, a free market group, to suggest that the antitrust laws should not be extended to the trucking industry. After all, the conventional wisdom has been that antitrust laws promote competition. Like other economic regulations, antitrust laws are justified as necessary to overcome the inherent "failures" of the market. Fortunately, the idea that the market is a delicate institution needing government assistance at every turn is weakening rapidly as the failings of bureaucratic at every turn is weakening rapidly as the failings of bureaucratic institutions becomes more and more evident. A recent Washington Post editorial for example suggested that we rethink the potential for harm in the antitrust laws noting that now "people seem to have greater faith that competition can work." That finding is overdue. The fragility of competition is not the result of the market but rather of our public institutions.

Moreover, economic scholarship has become increasingly critical of antitrust policies. Many antitrust regulations once applauded by economists are now viewed as harmful to consumer welfare. Antitrust critics now range from Lester Thurow on the left ("The cost [antitrust] imposes far exceed any benefits it brings," The Zero-Sum Society) to Milton Friedman on the right ("I am inclined to urge that the least of the evils is private, unregulated monopoly. . . .," Capitalism and Freedom). Robert Bork in his book, "The Antitrust Paradox." summarized: Modern antitrust has so decayed that the policy is no longer intellectually respectable. Some of it is not respectable as law; more of it is not respectable as economics; and a great deal of antitrust is not even respectable as politics.

In brief, the intellectual and legal underpinning of the current laws is in flux. This uncertainty creates problems. No firm can be confident that its organization arrangements will survive challenge in future antitrust cases. Do we wish to impose this uncertainty on an industry just emerging from ICC regulation?

To this general case to delay imposition of the antitrust laws on the trucking industry, it is necessary to add the problems likely to arise from the aggressiveness of both the Justice Department and private litigants. Finally, there is a need to consider the potential advantages that full deregulation might allow. Let me turn to these points.

A. Is justice a better regulator than the ICC?

The declining power of ICC and even more the increased willingness of the ICC commissioners to allow the market to determine competitive results has left a political void into which the Justice Department is eagerly entering. This eagerness is indicated by the growth in the Transportation Division staff from 6 in 1970 to 24 today. Empire building is certainly afoot. The Transportation Division at Justice notes that they are conducting 8 to 10 formal investigations of transportation practices and have moved to investigate a whole range of intrastate activities.

An earlier version of this turf battle between DOJ and ICC occurred in the years shortly following World War II. The ICC side of this war between the regulators is defended in "Transportation Under Two Masters" by Charles Drayton, recently reprinted by the National Motor Freight Traffic Association, Inc. In that earlier fight, the ICC "won" by succeeding in placing antitrust review powers in their hands under the Reed Bullwinkle Act. That solution, of course, merely made ICC the antitrust regulator. Nonetheless, ICC was willing to allow arrangements that would probably not be acceptable to the DOJ.

The risks of loosing the Department of Justice on the trucking industry and perhaps even more dramatically the household goods sector are great. Antitrusters have seen conspiracy in almost every normal business practice—a wink of the eye is sufficient to infer anticompetitive behavior. Moreover, the Justice Department by necessity will be highly arbitrary in deciding which cases to try. It would be impossible to deal with more than a fraction of the potential cases that might be brought before it. Thus, Justice is forced to act in a highly selective fashion; the political saliency of the actors involved in potential cases is likely to prove an important criteria for case selection.

B. The dangers of private antitrust actions

The antitrust laws encourage not only governmental interference with the market; they also provide private parties an alternative to competition. Businessmen are encouraged to argue that their competitors or suppliers are competing "unfairly" and should be constrained. And that avenue will be explored. In a recent article on this point, an antitrust attorney Lester Gutman noted "As the ICC continues to pull back further and further in different areas, resourceful lawyers are going to look for new remedies for their clients. . . In the next few years, you're going to see more ingenious private actions seeking certain results through the antitrust laws, that, five years ago, one would have gone to the ICC to obtain." James Calderwood, another antitrust attorney formerly at Justice in their transportation group, estimates there are already 2000 private transportation related antitrust suits pending and he expects this number to grow rapidly over the next several years. In principle of course these suits are only to advance competition; however Calderwood notes: "A skillful lawyer can make a minor official with little authority appear to be a calculating schemer, increasing the chances of a guilty verdict."

Calderwood further developed this point ("Movers and the Antitrust Laws," Movers Journal, June 1983):

"Increasingly, the ICC either cannot or will not respond to competitive complaints. . . . As a result, transportation companies who are harmed or imagine they are harmed may have only one possible effective avenue of law to turn to, that is, the antitrust laws. In times of economic uncertainty and rapid industry changes, those who lack the ability to properly plan and be flexible in the marketplace often look closely for "conspiracies" to harm them commercially. These are the primary reasons for the present increase in transportation related antitrust cases initiated in federal courts and probably will result in numerous such cases in the future." and then later:

"In the current regulatory climate, the ICC has issued certain decisions and rules which are designed to encourage a more competitive motor carrier industry. Some motor carriers are having difficulty adjusting to this more competitive business environment. They appear to be the ones who are initiating the antitrust suits as they see their traditional customers utilize rival motor carriers and their normal markets become saturated with newly certified competitors.

Complaints by motor carriers or shippers to the ICC about lower rates or new service options by other motor carriers will probably not now bring any action by the Commission. The marginal motor carrier, in danger of insolvency and unable or unwilling to adjust, may be able to react with only one type of legal action—a suit based upon the antitrust laws."

In better words, antitrust regulations make it much easier for businessmen unpleased with the results of competition to appeal to the political process. Antitrust laws encourage law suits rather than improved market performance.

The ICC is now considering the advisability of allowing antitrust regulations to be applied to small shipment pricing decisions in response to a filing by the National Small Shipments Traffic Conference, Inc., and others. Not surprisingly, Nasstrac believes the antitrust laws will provide a way to lever down prices. ICC has failed to grant them the relief they feel warranted and they seek access to some other political forum. The Nasstrac filing does not discuss any steps that may have been taken to explore market alternatives directly. Have the small shippers sought to organize their own purchase cooperative? Have they attempted to negotiate direct sales agreements or contracts with individual shippers? Have no firms been willing to discount their rates? None of this sounds particularly likely.

If current law makes it difficult for the shippers to arrange collective purchase arrangements, the appropriate remedy is to free shippers also from the antitrust restrictions—not to impose them on the carriers. This approach of ensuring that both sides can organize to manage pricing policies was suggested in a policy statement several years ago of the National Industrial Traffic League's antitrust position.

C. Antitrust inhibits many potentially valuable arrangements

Imposition of the antitrust laws on the transportation industry are likely to make illegal or at best questionable a number of horizontal arrangements. These would include pooling or market sharing agreements, rate bureaus and selected activities of transportation trade associations. The conventional view is that many if not all horizontal arrangements are "cartels" and thus inherently anticompetitive. consider the discussion by Breit and Elzinga ("The Antitrust Casebook," 1982): "A cartel is an agreement among rivals not to compete and whose purpose it is to restrict output and raise the price of their product. If competition is a good thing, it follows

that cartels are bad. the elimination of rivalry by firms that formerly competed is accomplished not by integration of productive facilities, as might be true in the case of a merger. Instead, the former rivals maintain separate firms, but act jointly in fixing prices or establishing market divisions, or even both."

Under the ICC immunities a whole range of cartel-like activities have grown up and these should receive extremely close scrutiny before they are made illegal. The above definition raises many problems; after all, to define a cartel as anticompetitive begs the question. Most horizontal arrangements are intended to achieve some functional role. Why should an agreement to publish jointly list prices (a rate bureau) or to seek business jointly and divide the receipts accordingly (a pooling arrangement) be anticompetitive? As discussed in more detail below, there are numerous reasons why such arrangements might enhance market efficiency. Moreover, the distinction between a cartel and a merger is not evident. Moreover, the distinction between a cartel and a merger is not evident. Why should a firm be forced to choose between total mergers and total independence? The most efficient organizational structure of an industry might well be one in which some activities were handled jointly and others were handled independently. Candidate activities for these partial mergers might include R&D, costing, operations, pricing, marketing or advertising.

Many of the firms involved in the household goods industry historically have been organized in a way unusual for most American businesses: the firms provide a structure in which independent agents meet both as competitors and owners to determine operating and pricing policies. This structure might well be construed as a horizontal arrangement among potential competitors (the agents) to restrain trade. Under antitrust, it is possible that some household goods carriers might be forced to choose between dissolution into the component agencies or total merger with the firms receiving directives rather than advisories from the parent firm. Neither of these choices is necessarily in the public interest.

The above arguments note some of the risks inherent in turning regulation over to the antitrusters. There are however positive arguments that directly argue for the continuation of freedom from antitrust regulations. These arguments deal with the positive value of various horizontal arrangements and are merely sketched below.

1. Rate Bureaus may Achieve Important Efficiency Gains.—Rate Bureaus may be an important asset in the competitive economy. Rate bureaus can be seen as a merger of otherwise independent firms to perform the pricing function. Determining the "correct" price to charge for any specific service can be extremely difficult. Thus, small shippers in particular may find it best to employ some specialist outside the firm. Note in the absence of ICC enforcement, the suggested rate bureau price is merely a list price. Individual firms have every incentive to consider discounts as appropriate. To argue that a uniform list price is equivalent to a uniform market price is naive. The history of efforts legal and illegal to fix prices has revealed few cases where prices were in fact "fixed." (See for example Dominick T. Armentano, "The Myths of antitrust" and "Antitrust and Monopoly," or Yale Brozen, "Concentration, Mergers, and Public Policy").

A recent article, "Antitrust and Price Competition in the Trucking Industry," (Denis A. Breen, The Antitrust Bulletin, Spring 1983) noted: "What is not clear at this time is the extent to which collective activities must be curtailed, as a practical matter, to achieve antitrust compliance. . . . At the same time, the welfare gains from successful prosecution of horizontal-restraint cases are likely to be slight, since the costs of reaching and maintaining an effective agreement in the less regulated environment are substantially higher, and therefore the probability of success is substantially lower." With the literature beginning to question the advisability of antitrust even in this area, would it not be wise to defer action?

2. Rate Bureaus Provide a Way of Reducing Information Costs.—A second argument for permitting rate bureaus is that they may well reduce the costs to shippers and carriers of reaching an agreement. The existence of a uniform agreed price schedule by a recognized organization—the bureau—makes it possible for an individual only occasionally purchasing transportation services to quickly determine a ballpark price. The individual can then spend the time felt necessary to bargain to achieve a more favorable price. The price quoted by the rate bureau would probably be higher than that available somewhere in the market but the product is different also. It is a known advertised product and thus different. List prices can provide an important aid in improving the efficiency of markets and there would appear to be no reason why this function should not be performed by rate bureaus. Realization that exchange of pricing information might well provide important efficiency gains

was the basis for Justice Marshall's dissent in United States v. Container Corporation of America (1969).

3. Rate Bureaus make Possible the Exchange of Cost Information.—Rate Bureaus may also be convenient ways of ensuring that technological and other improvements diffuse through the industry more rapidly. Firms meeting together discussing pricing and cost matters are likely to find out about efficiency improvements earlier. Even if the innovating firms hide their advantages, their pricing suggestions are likely to signal the possibility of further productivity gains to the other members. Again, this avenue for enhancing market efficiency might be important and should not be precluded.

The antitrust laws may well inhibit other cooperative R&D activities. Under antitrust, R&D is a problematic activity since engineering work blurs into economic analysis which in turn blends into pricing policies. Applied research is undertaken to improve profits and will almost always have some implications for pricing policies. Unless lawyers are to become more important in cooperative research than engineers and scientists, the antitrust laws should be suspended in this area.

4. Improved Equipment Utilization.—Trucking firms have adopted elaborate market sharing/pooling arrangements to improve equipment utilization. These arrangements are suspect under the antitrust laws since they merge, in part, the operating departments of competing firms. The antitrust laws cannot readily envision a situation in which competitors are also cooperators and both activities benefit consumers. Since such behavior does seem possible, again the case for caution in rushing into antitrust seems warranted.

5. Rate Bureaus Might Moderate Price Fluctuations.—an important cost of all businesses is that arising from the fluctuations of price levels. Wherever possible firms seek to moderate these swings by means such as future contracting, warehousing, buffer stocking and so forth. The rate bureau provides a possible means whereby firms might collectively increase or decrease their rates in an attempt to smooth the peaks and valleys. This stabilization function is not inherently anticompetitive although it certainly constitutes an effort to "fix" prices. Rate bureaus have rarely been able to play this role effectively, but few mechanisms to deal with uncertainty have been highly successful. Nonetheless, they should be allowed to try; the gains from a more stable pricing system are great.

Schumpeter in "Monopolistic Practices" makes exactly this point. He argues that industry be given the opportunity to moderate its price fluctuations—to organize its price "advances" and "retreats." He argued this would make for a more vigorous economy and noted: "There is no more of a paradox in this than there is in saying that motor cars are traveling faster than they otherwise would because they are provided with brakes."

6. Rate Bureaus Violate No Rights.—The activities of rate bureaus whatever one might say about their wisdom or efficiency are peaceable. Why shouldn't an individual or a group of individuals be legally entitled to set the conditions under which they will sell their services. As I noted in an earlier article ("Why Not Abolish Antitrust?", Regulation, January/February 1983): ". . . the Chicago School's case for antitrust policy—and its opposition to price fixing in particular—rests solely on economic efficiency, as if rights had nothing to do with the matter—as if business had no right in principle to dispose of its property as it sees fit, but only a conditional freedom so long as it helps maximize some social utility function. That is to say, no business is entitled to its property if that property can be redeployed so as to expand output."

This preference for freedom constitutes still another argument against hasty adoption of antitrust regulation.

7. The Motor Court Rate Making Study Commission.—Some have argued that the whole question of antitrust immunity has been thoroughly studied and resolved once and for all in the recent study mandated in the Motor Carrier Act. Unfortunately, that is not the case. That study merely considered the advisability of maintaining antitrust immunity in the context of the historic ICC. That study found that antitrust immunity and tight entry controls, rate floors enforced by ICC, restricted contracting ability and a range of other regulatory constraints produced undesirable results. No attention was given to the issue of whether, in the absence of such ICC restrictions, rate bureaus need be eliminated. Now that widespread consideration is being given to the elimination of all ICC powers and even the sunsetting of the agency, a different question is relevant. That question was not addressed in the Commission's proceedings.

V. SUGGESTED POLICY

Given the rethinking of antitrust policy now in progress, the need to complete the job of trucking deregulation, and the posssible benefits of allowing continued experimentation with horizontal arrangements in a deregulated economy, it would seem appropriate to place on hold any plans to impose antitrust regulations on the trucking industry. No one can be sure that the current arrangements will survive, but they should be allowed. Moreover, flexibility in this area might provide the leverage necessary to gain acceptance from at least some sectors of the trucking industry for total economic deregulation via the sunsetting of the ICC. Such support would be extremely useful given the problems faced in recent years in completing the task of deregulation.

I would suggest that the Committee examine the antitrust question in greater detail and consider carefully the value and risks inherent in imposing such regulations once ICC regulations are removed. There is little to lose in deferring imposition of the antitrust regulations and possibly much to gain. The Committee might well wish to monitor the industry as deregulation takes hold and reconsider this question at a future time. For the moment however rate bureaus and other forms of horizontal arrangements in the trucking industry should be considered per se legal.

QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question 1. What difficulties might be encountered by the household goods industry if antitrust immunity were removed?

Answer. The households goods industry now relies heavily on cooperative ratemaking and market sharing arrangements. These cooperative endeavors grew out of the need for smaller carriers to improve their efficiency by cooperating with other carriers to coordinate backhaul or return load business. Over time, those arrangements led to rate bureaus operating between van lines; and for many van lines to be owned and operated by independent agents also acting as carriers in their own right (under traditional regulation, they possessed their own operating authority). Thus, a van line may be seen as a way of coordinating operating and pricing policies of competitions—a "collusive cartel" to use the pejorative language of antitrust. Such cooperative arrangements between potential competitors is viewed with extreme prejudice under the current antitrust regulatory philosophy. In effect, the van lines might be viewed as arrangements by competitors to arrange a corporate shell within which a "bad" "collusive" cartel would operate.

As I note in my testimony, current antitrust policy has no serious intellectual defense; nonetheless that philosophy is deeply engrained in the operating policies and judicial record of the current antitrust establishment. Thus, to subject the moving industry to antitrust policies might well force a total restructuring of the household goods industry. Assurances to the industry have little value, since future administrations or private parties might take a different tack and prevail given the current climate for resolving such disputes.

Question 2. Would consumers be adversely affected if antitrust immunity were removed?

Answer. Of course. Consumers benefit from the voluntary arrangements that emerge from the market. Typically a market will evolve a mix of price/quality options to meet the corresponding mix of consumer preferences. In the households goods industry, the recent offering of binding bids suggests one emerging option which some consumers are likely to prefer. The industry should be given maximum freedom to introduce these new options. Among the possible values that consumers may gain from voluntary arrangements such as rate bureaus are improved efficiency via simplified bargaining among carriers to arrange routing and return loads, greater stability in the pricing structures which reduce the uncertainty to the consumer who may have little flexibility in timing his move, and lower search costs to arrive at an acceptable bargain. Note that the existence of a list price structure is not the same thing as a fixed price structure. A uniform list price may well reduce the search costs of individuals who infrequently move. More sophisticated purchasers—corportions or the military for example—would be expected to bargain directly to obtain specialized treatment and volume discounts.

Moreover, the issue is not what antitrust immunity has allowed in the past, but rather what it might provide in the future. Freedom from antitrust has been in the past confounded with restrictions on competition. The industry was allowed to cooperate in some ways (limited antitrust immunity existed), but was not free to compete (ICC rules limited pricing flexibility and entry). In a deregulated environment, one would therefore expect cooperative arrangements to yield even greater consum-

er benefits. For example, competing cooperative pricing associations might emerge within the same geographic area. Firms cooperating in the same cooperative pricing arrangements would be expected to offer comparable services and thus the consumer would be able to shop more readily among say slow delivery/lower price and fast delivery/higher price options. This wider range of in effect "branded" choices would allow consumers more certainty and reduced search time.

Question 3. What specific actions would you recommend to improve the financial health of the household goods sector, and to enable these carriers to provide even better service to the American public?

Answer. First, I would eliminate the move to impose special "pro-consumer" requirements on the industry. There is no evidence that such regulations do anything to improve consumer welfare and considerable evidence to the contrary. Indeed, our latest Nobel prize winner, George Stigler, has an interesting article discussing the question of whether "Government Can Protect the Consumer." It would be particularly unfortunate if Congress in eliminating the current barriers to consumer welfare maintained by the Interstate Commerce Committee were to shift these regulatory powers to the Federal Trade Commission. That Commission has a long and undistinguished record of over-riding consumer choices in order to "help the consumer." Richard Posner in a dissent to an ABA study of the Federal Trade Commission noted: "Individuals probably know a good deal more about household products than about political questions. If we trust them to evaluate competing and often fraudulent claims by political candidates, we should also trust them to evaluate competing product claims."

Posner's comments have been followed over the last decade by a considerable body of work that finds special interest dominance of regulatory agencies, high bureaucratic costs, and low to negative benefits to consumers. Thus, one important step that Congress should take is to eliminate the special regulatory restrictions curbing the household goods moving industry, and ensure that these special restrictions are not transferred to the FTC upon the abolishment of the ICC. The FTC already has a broad mandate to interfere in any consumer market; that power is itself excessive had has led to much mischief. It would be particularly foolish to single out the household industry for additional punishment.

These comments reinforce the thrust of my testimony which is that Congress should move to totally deregulate the household goods industry. Deregulation will involve some major changes in the industry. In particular, industry will have to learn how to price its services and this will require that industry managers gain a much greater understanding of costs. This learning will not take place uniformly; some firms will become better "pricers" at an earlier stage. The current arrangments for cooperation provide a useful mechanism whereby this knowledge might be more swiftly disseminated throughout the industry; and thus a means of ensuring that the level of disruption associated with deregulation is minimized. Thus, at minimum, Congress should move soon to protect these cooperative arrangments from attacks by the Antitrust Division of Justice. That group is already moving aggressively to attack such practices at the state level and is prepared to do so at the federal level.

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